8–19–96
Vol. 61 No. 161
Pages 42773–42964

Federal Register

Monday
August 19, 1996

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

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

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

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

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the Federal Register on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

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

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

NEW YORK, NY

WHEN: September 17, 1996 at 9:00 am.
WHERE: National Archives—Northwest Region
201 Varick Street, 12th Floor
New York, NY
RESERVATIONS: 800–688–9889
(Federal Information Center)

WASHINGTON, DC

WHEN: September 24, 1996 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 61, No. 161

Monday, August 19, 1996

Separate Parts In This Issue

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 61, No. 161
Monday, August 19, 1996

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 9

Award of Fellowships to Applicants From Other American Republics

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: This action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain. This final rule removes obsolete regulations pertaining to award of fellowships to applicants from other American Republics by the Agricultural Research Service.

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT: Darrell F. Cole, Assistant Deputy Administrator, National Program Staff, Agricultural Research Service, USDA, Bldg, 005, Room 120, Beltsville Agricultural Research Center, Beltsville, MD 20705, (301) 504–5861.

SUPPLEMENTARY INFORMATION: This rule has been determined not to be significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Also, this rule will not cause a significant economic impact or other substantial effect on small entities and, therefore, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply. This action is being taken as part of the National Performance Review program to eliminate unnecessary regulations. Since this rule relates to internal agency management and removes obsolete recommendations which have not been used for many years, notice of proposed rulemaking and opportunity for public comment are not required, and this rule may take effect 30 days after publication.

List of Subjects in 7 CFR Part 9

Agriculture, Scholarships and fellowships, Type of fellowships, qualifications, award of fellowships, allowances and expenses, duration of fellowships, official notification, and definitions.

PART 9—[REMOVED AND RESERVED]

Accordingly, 7 CFR Part 9 is removed and reserved.

Authority: 5 U.S.C. 301.

Done at Washington, D.C., this 12th day of August 1996.

Floyd P. Horn,

Administrator, Agricultural Research Service.

[FR Doc. 96–21069 Filed 8–16–96; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–181–AD; Amendment 39–9713; AD 96–17–05]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This action requires the installation of a mechanical flight idle stop on the control quadrant of the flight compartment. This action also requires a revision of the Airplane Flight Manual to ensure the use of certain operating procedures after the mechanical flight idle stop is installed. Additionally, this action provides an optional terminating action for the requirements of this AD. This amendment is prompted by a report indicating that the means of protection against the selection of the ''beta'' range of propeller operation during flight has been reduced on certain modified control quadrants. Additionally, there have been reports indicating that power levers on the control quadrant have been moved aft of the flight idle position during flight due to improper usage of the mechanical beta stop. The actions specified in this AD are intended to prevent such movement of the power lever(s) during flight, which could result in propeller overspeed, engine damage, and loss of power to one or both engines.

DATES: Effective September 3, 1996.

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

Comments for inclusion in the Rules Docket must be received on or before October 18, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from SAAB Aircraft AF, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has received a report from an operator of a Model SAAB 340B series airplane indicating that, during training, the flightcrew noticed a reduction in the protection associated with movement of the power levers aft of the flight idle position during flight. Moving the power lever settings aft of the flight idle position (or ''below flight idle'') places the airplane in the ''beta'' range of operation. ''Beta'' is the range of propeller operation intended for use only during taxi, ground idle, or reverse operations. If ''beta'' range is selected, either intentionally or inadvertently, during flight, it could result in propeller

overspeed, engine damage, and loss of power to one or both engines.

Automatic Flight Idle Stop Modification

The airplane involved in the incident referred to above was equipped with a modified control quadrant. The installation of a new control quadrant is described in Saab Service Bulletins 340–76–032 and 340–76–037, and is part of the modification necessary to install an automatic flight idle stop system that will automatically prevent movement of the power levers aft of flight idle during flight.

The modification also entails the removal of a certain beta stop protection device that was a basic original feature of the Saab Model 340 series airplanes. This original protection device featured serrations in the power lever assembly that helped to prevent the inadvertent movement of the power levers aft of the flight idle position. The modified control quadrant does not provide these serrations, however, and thus eliminates what would serve as a ''back-up'' feature for beta stop protection. This is not an issue of concern on airplanes where the automatic flight idle stop system has been installed and activated. However, for airplanes on which the modified control quadrant is installed, but the automatic flight idle stop system is not yet activated, beta stop protection is even further reduced.

Mechanical Flight Idle Stop Modification

Some Saab Model 340 series airplanes have been modified with the installation of a mechanical beta stop mechanism on the control quadrant in accordance with Saab Service Bulletin 340–76–034. (Procedures for installing a mechanical stop are also described in Saab Service Bulletins 340–76–036 and 240–76–037.) This mechanical stop is manually operated and, if used, prevents any power lever from being unintentionally moved into beta range during retardation of the power lever during flight. It is considered to be an interim improvement in beta protection until the automatic flight idle stop system is installed and activated.

While this mechanical stop serves as a means of beta protection, the FAA has received several reports indicating that the flight crew did not use the mechanical stop, or used it improperly, and moved the power levers into the beta range during flight.

Explanation of Relevant Service Information

Saab has issued the following service bulletins that pertain to beta protection devices:

1. Saab Service Bulletin 340–76–034, dated January 4, 1995, describes procedures for installation of a mechanical flight idle stop on the control quadrant in the flight compartment. Accomplishment of this installation is intended to prevent the power levers from being moved aft of the flight idle stop during flight. The Luftfartsverket (LFV), the airworthiness authority for Sweden, has classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–067, dated January 9, 1995, in order to assure the continued airworthiness of these airplanes in Sweden.

2. Saab Service Bulletin 340–76–032, Revision 2, dated December 8, 1995; and Revision 3, dated March 25, 1996; describe procedures for installation and activation of an automatic flight idle stop system on the control quadrant in the flight compartment.

The installation involves:

—Removing the mechanical beta stop (if installed),

—Removing the old control quadrant,

—Installing a new/modified control quadrant with an automatic flight idle stop, and

—Accomplishing a functional test of the flight idle stop system.

Accomplishment of this installation also will prevent the power levers from being moved aft of the flight idle stop during flight. Installation and activation of an automatic flight idle stop, if accomplished, eliminates the need for installation of a mechanical flight idle stop. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–070, dated April 10, 1995, in order to assure the continued airworthiness of these airplanes in Sweden.

3. Saab Service Bulletin 340–76–038, dated December 8, 1995, describes procedures to reactivate the automatic flight idle stop system for those systems that have been installed previously, but deactivated in accordance with Saab Service Bulletin 340–76–036. If accomplished, such reactivation also eliminates the need for installation of a mechanical flight idle stop. The LFV has approved the technical content of this service bulletin.

U.S. Type Certification of the Airplanes

Saab Model SAAB SF340A and SAAB 340B series airplanes are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent movement of the power lever(s) aft of the flight idle position during flight. That situation could result in the overspeed of the propeller and power turbine of the engines and consequent loss of power to one or both engines, as well as severe engine damage.

This AD requires the installation of the mechanical flight idle stop on the control quadrant in the flight compartment in accordance with Saab Service Bulletin 340–76–034, described previously.

To prevent inappropriate usage of this mechanical stop, this AD also requires that the FAA-approved Airplane Flight Manual (AFM) be revised to ensure that the flight crews are advised of the specific limitations necessary to address flight operations when the mechanical flight idle stop is installed.

Additionally, this AD provides for optional terminating action for the requirements of this AD, as installation of the modified control quadrant and activation of the automatic flight idle stop.

Determination of Rule's Effective Date

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

Interim Action

This AD is considered to be interim action. On March 15, 1996, the FAA issued a notice of proposed rulemaking (NPRM), Docket 95–NM–243–AD (61 FR 11591, March 21, 1996), to require installation and activation of the *automatic* flight idle stop on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. However, the FAA has determined that the *mechanical* flight idle stop, as required by this AD, must be provided for certain airplanes in the interim until the automatic flight idle stops are installed and activated.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or

arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–181–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–17–05 SAAB Aircraft AB: Amendment 39–9713. Docket 96–NM–181–AD.

Applicability: Model SAAB SF340A and SAAB 340B series airplanes on which Saab Service Bulletin 340–76–034, dated January 4, 1995; Saab Service Bulletin 340–76–036, dated December 8, 1995; or Saab Service Bulletin 340–76–037, dated December 8, 1995, have been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 movement of both power levers aft of the flight idle stop during flight, accomplish the following:

(a) For airplanes on which an automatic flight idle stop system has been installed, but deactivated in accordance with Saab Service Bulletin 340–76–036, dated December 8, 1995; or on which a control quadrant in the flight compartment has been installed in accordance with Saab Service Bulletin 340–76–037, dated December 8, 1995: Within 7 days after the effective date of this AD, install a mechanical flight idle stop on the control quadrant in the flight compartment in accordance with Saab Service Bulletin 340–76–034, dated January 4, 1995, and accomplish the requirements of paragraph (b) of this AD.

(b) For airplanes subject to paragraph (a) of this AD; and for airplanes on which a mechanical flight idle stop has been installed on the control panel in accordance with Saab Service Bulletin 340–76–034, dated January 4, 1995, previous to the effective date of this AD: Within 7 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following operating limitations. This may be accomplished by inserting a copy of this AD in the AFM.

''Mechanical Beta Stop Operating Limitations

—The stop must be in the beta open position during all ground operations including takeoff run.

—The stop must be lifted and positioned fully forward and down in the beta stop position during climb-out after take-off.

—The stop must remain in the beta stop position throughout the remainder of the flight until after touchdown.

—The stop must be lifted and positioned in the beta open position immediately after touchdown.

—Landing Field Lengths Required must be increased by 5% and 8% for flap settings 35 and 20, respectively.''

(c) Installation and activation of the automatic flight idle stop system in accordance with Saab Service Bulletin 340–76–032, Revision 2, dated December 8, 1995, or Revision 3, dated March 25, 1996; or reactivation of the system in accordance with Saab Service Bulletin 340–76–038, dated December 8, 1995; constitute terminating action for the requirements of this AD. Once the system has been activated, the mechanical flight idle stop and the AFM revision required by this AD may be removed.

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

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

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

(f) The installation of the mechanical flight idle stop shall be done in accordance with Saab Service Bulletin 340–76–034, dated January 4, 1995. The installation and activation of the automatic flight idle stop system shall be done in accordance with Saab Service Bulletin 340–76–032, Revision 2, dated December 8, 1995; or Saab Service Bulletin 340–76–032, Revision 3, dated March 25, 1996. The reactivation of the system shall be done in accordance with Saab Service Bulletin 340–76–038, dated

December 8, 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 SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 3, 1996.

Issued in Renton, Washington, on August 7, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–20672 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–177–AD; Amendment 39–9717; AD 96–17–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –40, and KC–10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –40, and KC–10A (military) series airplanes, that requires modification of the AC generator control units. This amendment is prompted by reports of loss of electrical power from two generators and an engine that flamed out due to an overfrequency condition of a generator. The actions specified by this AD are intended to prevent an overfrequency condition of a generator, which could lead to the loss of all electrical power of the airplane.

DATES: Effective September 23, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 23, 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: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5343; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –40, and KC–10A (military) series airplanes was published in the Federal Register on January 3, 1996 (61 FR 134). That action proposed to require modification of the AC generator control units.

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

Three commenters support the proposed rule.

Request Not to Adopt the Rule

One commenter requests that the proposed AD not be adopted as proposed. The commenter states that the modification (i.e., addition of a circuit that will provide overfrequency protection) proposed by the AD causes a significant reduction in the reliability of the generator control unit (GCU). The commenter notes that, following accomplishment of the proposed modification, it has experienced an increase of GCU removals and bus tie relay (BTR) lockouts on in-service airplanes. The commenter acknowledges that the subject modification may add a margin of operating safety to the electrical generator system of Model DC–10 series airplanes; however, the commenter notes that the margin may be eliminated with the reduction in the reliability of the GCU and increased BTR lockouts. Therefore, the commenter concludes that the FAA should investigate the root cause of the failure of the constant speed drive (CSD).

The FAA does not concur with the commenters request that the proposal not be adopted. The FAA acknowledges that the subject modification may cause a reduction in the reliability of the GCU, which may lead to increased removals of the GCU; and may cause an increase in the BTR lockouts. However, the FAA has determined that the GCU's have a low failure rate, since the overfrequency protection circuit contains a minimum of parts; therefore, the reduction in the reliability of the GCU will be minimal. In addition, the FAA recognizes that the BTR lockouts may be a nuisance; however, the FAA finds that such lockouts will not adversely affect the safety of the fleet. Furthermore, the FAA has evaluated the root cause of the CSD failure and concluded that there are no assurances that could prevent the failure of the CSD. Therefore, the FAA finds that modification of the GCU's is necessary to provide overfrequency protection as a result of failure of the CSD. An overfrequency condition of a generator, if not corrected, could lead to the loss of all electrical power of the airplane.

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 419 Model DC–10–10, –15, –30, –40, and KC–10A (military) series of the affected design in the worldwide fleet. The FAA estimates that 276 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,896 per generator control unit; there are 4 units per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,279,984, or $11,884 per airplane.

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

Regulatory Impact

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

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–17–08 McDonnell Douglas: Amendment 39–9717. Docket 95–NM–177–AD.

Applicability: Model DC–10–10, –15, –30, –40, and KC–10A (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC10–24–111 RO1, Revision 1, dated August 14, 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an overfrequency condition of the generator, which could result in loss of all electrical power of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, modify the AC generator control units (GCU) in accordance with McDonnell Douglas Service Bulletin DC10–24–111 RO1, Revision 1, dated August 14, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(d) The modification shall be done in accordance with McDonnell Douglas Service Bulletin DC10–24–111 RO1, Revision 1, dated August 14, 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.

(e) This amendment becomes effective on September 23, 1996.

Issued in Renton, Washington, on August 9, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–20873 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–241–AD; Amendment 39–9715; AD 96–17–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires repetitive inspections to detect discrepancies of the slat universal joint and steady bearing assemblies, and replacement of any discrepant assembly with a new, like assembly. This amendment also requires replacement of all slat universal joint and steady bearing assemblies with improved assemblies, which would terminate the repetitive inspections. This amendment is prompted by reports of broken or missing inner races on the slat universal joint and steady bearing assemblies of the slat transmission system. The actions specified by this AD are intended to prevent cracking of the inner race, which could cause it to break off and, consequently, allow the slat universal joint and steady bearing assemblies to become worn; this situation could result in failure of the shaft of the slat transmission system, and subsequent uncommanded movement of the associated slat.

DATES: Effective September 23, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 23, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes was published in the Federal Register on May 8, 1996 (61 FR 20762). That action proposed to require repetitive visual inspections to detect discrepancies of the slat universal joint and steady bearing assemblies, and replacement of any discrepant assembly with a new,

like assembly. That action also proposed to require replacement of all slat universal joint and steady bearing assemblies with new assemblies, which would constitute terminating action for the repetitive inspection requirements.

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

Both commenters support the proposed rule.

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

The FAA estimates that 26 Airbus Model A310 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 5 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $7,800, or $300 per airplane, per inspection.

It will take approximately 9 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $48,108 per airplane. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $1,264,848, or $48,648 per airplane.

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 adding the following new airworthiness directive:

96–17–06 Airbus Industrie: Amendment 39–9715. Docket 95–NM–241–AD.

Applicability: Model A310 series airplanes, on which Airbus Modification 6022 or 6485 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the shaft of the slat transmission system, and subsequent uncommanded movement of the associated slat, accomplish the following:

(a) Prior to the accumulation of 2,000 landings or 500 flight hours after the effective date of this AD, whichever occurs later, perform a visual inspection to detect discrepancies of the slat universal joint and steady bearing assemblies, in accordance with Airbus Service Bulletin A310–27–2040, Revision 2, dated January 5, 1995.

Note 2: Airbus Service Bulletin A310–27–2040 inadvertently references LUCAS/LIEBHERR Service Bulletin 551A–27–6010 as the appropriate source for accomplishing the inspection. LUCAS/LIEBHERR Service Bulletin 551A–27–610 is the appropriate source of information.

(1) If no discrepancy is found, repeat the inspection thereafter at intervals not to exceed 2,000 landings.

(2) If any discrepancy is detected and the groove depth on the shaft is greater than or equal to 1 mm (0.04 in.), prior to further flight, replace the discrepant bearing assembly with a new, like assembly, in accordance with the service bulletin. After replacement, repeat the visual inspection thereafter at intervals not to exceed 2,000 landings.

(3) If any discrepancy is detected and the groove depth on the shaft is less than 1 mm (0.04 in.), prior to 50 landings after accomplishing the initial inspection, replace the discrepant bearing assembly with a new, like assembly, in accordance with the service bulletin. After the replacement, repeat the visual inspection thereafter at intervals not to exceed 2,000 landings.

(b) Within 5 years after the effective date of this AD, replace the slat universal joint and steady bearing assemblies with new assemblies, in accordance with LUCAS/LIEBHERR Service Bulletin 523–27–M523–1, dated April 25, 1986. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The actions shall be done in accordance with Airbus Service Bulletin A310–27–2040, Revision 2, dated January 5, 1995, and LUCAS/LIEBHERR Service Bulletin 523–27–M523–1, dated April 25, 1986. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 23, 1996.

Issued in Renton, Washington, on August 9, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–21871 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–115–AD; Amendment 39–9716; AD 96–17–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes Equipped With Swivel-Type Bogie Beams on the Main Landing Gears

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that requires an inspection to detect cracking of the swivel bogie beam lugs, and repair, if necessary. For airplanes on which no cracking is found, this amendment also requires an inspection to detect corrosion of the swivel pin lug surfaces and bores, and modification of the forward bogie beams. This amendment is prompted by reports indicating that swivel pin lugs of the main landing gear (MLG) have failed due to cracks resulting from stress corrosion. The actions specified by this AD are intended to prevent such stress corrosion, which could result in failure of the swivel-type bogie beam of the MLG; this condition could result in collapse of the MLG during landing.

DATES: Effective September 23, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 23, 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, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 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: Mike Lee, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5325; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes was published in the Federal Register as a supplemental notice of proposed rulemaking on November 1, 1995 (60 FR 55496). That action proposed to require a magnetic particle inspection to detect cracking of the swivel bogie beam lugs, and repair, if necessary. For airplanes on which no cracking is found during the magnetic particle inspection, that action also proposed to require a visual inspection to detect corrosion of the swivel pin lug surfaces and bores, and modification of the forward bogie beams.

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

Request To Revise Proposed Compliance Times

The commenter states that the actions described in McDonnell Douglas S.B. 32–182 (the service information referenced in the proposed rule) should be accomplished at gear overhaul.

The FAA infers that the commenter requests the compliance times be revised to reflect the intervals for gear overhaul. The FAA does not concur that the compliance times need to be revised in this AD. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation as to an appropriate compliance time, but the degree of urgency associated with addressing the subject unsafe condition, and the intervals for gear overhaul of the majority of affected operators. In addition, paragraph (a)(2) of the AD provides a grace period for those operators that may have accomplished a gear overhaul just prior to the effective date of this AD, or that may be required to accomplish such an overhaul soon after this AD becomes effective. However, under the provisions of paragraph (e) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comment 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 148 McDonnell Douglas Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 97 airplanes of U.S. registry will be affected by this AD, that it will take approximately 83 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $483,060, or $4,980 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–17–07 McDonnell Douglas: Amendment 39–9716. Docket 95–NM–115–AD.

Applicability: Model DC–8 airplanes equipped with main landing gears having swivel type bogie beams on which the swivel pin lugs have not been nickel plated, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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 failure of the swivel-type bogie beam of the main landing gear (MLG) due to stress corrosion, which could result in collapse of the MLG during landing, accomplish the following:

(a) Perform a one-time magnetic particle inspection to detect cracking of the swivel bogie beam lugs, in accordance with McDonnell Douglas DC–8 Service Bulletin 32–182, dated January 20, 1995; McDonnell Douglas Service Bulletin DC8–32–182 RO1, Revision 1, dated July 21, 1995, or Revision 02, dated August 30, 1995; at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 11,600 total flight hours, or within 10 years since the installation of the forward bogie beam of the MLG, whichever occurs first.

(2) Prior to the accumulation of 2,000 flight hours, or 2 years after the effective date of this AD, whichever occurs first.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, perform a visual inspection to detect corrosion in the swivel pin lug surfaces and bores, in accordance with McDonnell Douglas DC–8 Service Bulletin 32–182, dated January 20, 1995; or McDonnell Douglas Service Bulletin DC8–32–182 RO1, Revision 1, dated July 21, 1995, or Revision 02, dated August 30, 1995.

Note 2: Particular attention should be paid to the lubrication of the swivel pin lug and the lower swivel pin bushing during regular normal maintenance.

(1) If no corrosion is detected, prior to further flight, accomplish paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this AD, as applicable, in accordance with the service bulletin.

(i) For Group I airplanes on which the forward bogie beam has not been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group I airplanes) as Condition 1 of the Accomplishment Instructions of the service bulletin.

(ii) For Group I airplanes on which the forward bogie beam has been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group I airplanes) as Condition 2 of the Accomplishment Instructions of the service bulletin.

(iii) For Group II airplanes on which the forward bogie beam has not been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group II airplanes) as Condition 1 of the Accomplishment Instructions of the service bulletin.

(iv) For Group II airplanes on which the forward bogie beam has been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group II airplanes) as Condition 2 of the Accomplishment Instructions of the service bulletin.

(2) If any corrosion is detected, prior to further flight, accomplish paragraph (b)(2)(i), (b)(2)(ii), (b)(2)(iii), or (b)(2)(iv), as applicable, in accordance with the service bulletin.

(i) For Group I airplanes on which the forward bogie beam has not been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group I airplanes) as Condition 1 of the Accomplishment Instructions of the service bulletin. If the dimensions of the reworked swivel pin lug exceed the limits specified in Table I of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(ii) For Group I airplanes on which the forward bogie beam has been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group I airplanes) as Condition 2 of the Accomplishment Instructions of the service bulletin. If the dimensions of the reworked swivel pin lug exceed the limits specified in Table I of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(iii) For Group II airplanes on which the forward bogie beam has not been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group II airplanes) as Condition 1 of the Accomplishment Instructions of the service bulletin. If the dimensions of the reworked swivel pin lug exceed the limits specified in Table I of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(iv) For Group II airplanes on which the forward bogie beam has been modified previously: Modify the forward bogie beam in accordance with the actions specified (for Group II airplanes) as Condition 2 of the Accomplishment Instructions of the service bulletin. If the dimensions of the reworked swivel pin lug exceed the limits specified in Table I of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If any cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(d) As of the effective date of this AD, no forward bogie beam swivel pin lug shall be installed on any airplane, unless that swivel pin lug has been modified in accordance with McDonnell Douglas DC–8 Service Bulletin 32–182, dated January 20, 1995; or McDonnell Douglas Service Bulletin DC8–32–182 RO1, Revision 1, dated July 21, 1995, or Revision 02, dated August 30, 1995.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(g) The inspections and modification shall be done in accordance with McDonnell Douglas DC–8 Service Bulletin 32–182, dated January 20, 1995; McDonnell Douglas DC–8 Service Bulletin DC8–32–182 RO1, Revision 1, dated July 21, 1995; or McDonnell Douglas DC–8 Service Bulletin DC8–32–182 RO2, Revision 02, dated August 30, 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.

(h) This amendment becomes effective on September 23, 1996.

Issued in Renton, Washington, on August 9, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–20870 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 96–ANE–19; Amendment 39–9714; AD 96–15–06]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 96–15–06 that was sent previously to all known U.S. owners and operators of Pratt & Whitney (PW) JT8D–200 series turbofan engines by individual letters. This AD requires, prior to further flight, removal from service all affected fan hubs, identified by serial number, and replacement with serviceable parts. This amendment is prompted by a report of an accident involving an uncontained failure of a stage 1 fan hub. The actions specified by this AD are intended to prevent the initiation and propagation of a fatigue crack, fracture of the fan hub, uncontained engine failure, and damage to the aircraft.

DATES: Effective September 3, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–15–06, issued on July 16, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before October 18, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–19, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''epd-adcomments@mail.hq.faa.gov''. All comments must contain the Docket No. in the subject line of the comment.

FOR FURTHER INFORMATION CONTACT: Robert E. Guyotte, Manager, Engine Certification Branch, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7142, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On July 16, 1996, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 96–15–06, applicable to Pratt & Whitney (PW) JT8D–200 series engines, which requires, prior to further flight, removal from service all affected fan hubs, identified by serial number, and replacement with serviceable parts. That action was prompted by a report of an accident involving an uncontained failure of a stage 1 fan hub. A fan hub failure poses a serious threat to safety of flight due to the possibility of high energy engine fragments penetrating the aircraft fuselage. The reported fan hub failure resulted from a fatigue crack that originated in a tie bolt hole. The fatigue crack initiated from mechanical surface damage produced during machining of the tie bolt holes, and propagated in a low cycle fatigue mode due to normal engine start-stop cycles. The manufacturing records indicate that a surface anomaly was observed in a tie bolt hole during the Blue Etch Anodize inspection which was determined to be acceptable. The manufacturing records indicate that six other hubs with similar anomalies in the tie bolt holes were installed on engines in revenue service. The FAA has determined that all hubs that exhibited surface anomalies during inspection of the type observed on the accident hub are not acceptable and must be removed from service, and replaced with a serviceable part prior to further flight. This condition, if not corrected, could result in the initiation and propagation of a fatigue crack, fracture of the fan hub, uncontained engine failure, and damage to the aircraft.

The FAA is continuing the investigation and based on investigative findings, further rulemaking action may be required.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 96–15–06 to prevent fracture of the fan hub, uncontained engine failure, and damage to the aircraft. The AD requires, prior to further flight, removal from service all affected fan hubs, Part Number (P/N) 5000501–01, identified by any of the following Serial Numbers: T50693, T50823, T50827, R32926, R32960, P66756, and replacement with serviceable parts. The FAA determined this compliance time based on the potential severity of the aircraft hazard in the event of a fan hub failure, in conjunction with evidence of tie bolt hole surface anomalies during manufacturing inspection.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 16, 1996, to all known U.S. owners and operators of PW JT8D–200 series turbofan engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following

statement is made: ''Comments to Docket Number 96–ANE–19.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–15–06 Pratt & Whitney: Amendment 39–9714. Docket 96–ANE–19.

Applicability: Pratt & Whitney (PW) JT8D–200 series turbofan engines incorporating affected first stage fan hubs, Part Number (P/N) 5000501–01, identified by any of the following Serial Numbers: T50693, T50823, T50827, R32926, R32960, P66756.

These engines are installed on but not limited to McDonnell Douglas MD–80 series aircraft

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the initiation and propagation of a fatigue crack, fracture of the fan hub, uncontained engine failure, and damage to the aircraft, accomplish the following:

(a) Prior to further flight, remove from service all affected first stage fan hubs, P/N 5000501–01, identified by Serial Numbers listed in the applicability paragraph of this AD, and replace with serviceable parts.

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

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

(c) This amendment becomes effective September 3, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–15–06, issued July 16, 1996, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on August 7, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–21033 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 96–ANE–21; Amendment 39–9709, AD 96–17–01]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. Model T5313B Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B turboshaft engines. This action supersedes priority letter AD 96–15–07 that currently requires, prior to further flight, removal from service of all suspect second stage power turbine disks, identified by serial number, and replacement with serviceable parts. This action corrects an incorrect second stage power turbine disk serial number. This amendment is prompted by report of a typographical error in the serial number listing. The actions specified by this AD are intended to prevent possible failure of a second stage power turbine disk, uncontained engine failure, and damage to aircraft.

DATES: Effective September 9, 1996.

Comments for inclusion in the Rules Docket must be received on or before October 18, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–21, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''epd-adcomments@mail.hq.faa.gov''. All comments must contain the Docket No. in the subject line of the comment.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On July 16, 1996, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 96–15–07, applicable to AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B turboshaft engines, which requires prior to further flight, removal from service of all suspect second stage power turbine disks, identified by serial number, and replacement with serviceable parts. That action was prompted by a report that surplus military second stage power turbine disks, Part Number (P/N) 1–140–272–04, were used on civil aircraft. These disks were manufactured by a military parts supplier outside of a Federal Aviation Administration (FAA)-approved manufacturing quality system. When compared to parts manufactured for civil use, parts manufactured for military service may undergo different manufacturing procedures, and receive

different quality control inspections, that are not approved by the FAA. After a review of some disk records, the FAA cannot determine whether the suspect disks conform with the FAA-approved type design for similar disks used in civil aircraft engines. Therefore, the suspect disks are currently not airworthy for use in civil engines, and must be removed from service. Twelve disks were subsequently installed in civil engines, four of these disks are currently in service. Although the FAA has not received any reports of suspect disk failures to date, it is unknown whether the suspect disks provide an acceptable level of safety for any period of operation. This condition, if not corrected, could result in possible failure of a second stage power turbine disk, uncontained engine failure, and damage to aircraft.

Since the issuance of that priority letter AD, the FAA received a report of a typographical error in the serial number listing.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 96–15–07 to correct an incorrect second stage power turbine disk serial number.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–21.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–17–01 AlliedSignal Inc.: Amendment 39–9709. Docket No. 96–ANE–21. Supersedes AD 96–15–07.

Applicability: AlliedSignal Inc., (formerly Textron Lycoming) Model T5313B turboshaft engines, incorporating suspect second stage power turbine disks, Part Number (P/N) 1–140–272–04, identified by any of the following Serial Numbers: SC05903/32891–451, SC09442/32891–476, SC09685/32891–623, SC09723/32891–654, SC09743/32891–437, SC09759/32891–634, SC09755/32891–637, SC09779/32891–682, SC09908/32891–657, SC10100/32891–649, SC10267/32891–573, SC10269/32891–471.

These engines are installed on but not limited to Bell Helicopter Textron 205A–1 series rotorcraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible failure of a second stage power turbine disk, uncontained engine failure, and damage to aircraft, accomplish the following:

(a) Prior to further flight, remove from service all suspect second stage power turbine disks, P/N 1–140–272–04, identified by Serial Numbers listed in the applicability paragraph of this AD, and replace with serviceable parts.

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

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

(c) This amendment supersedes priority letter AD 96–15–07, issued July 16, 1996.

(d) This amendment becomes effective on September 9, 1996.

Issued in Burlington, Massachusetts, on August 6, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–21034 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–ANE–23]

Establishment of Class E Airspace; Dexter, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes a Class E airspace area at Dexter, ME (K1B0) to provide for adequate controlled airspace for those aircraft using the new GPS RWY 34 Instrument Approach Procedure to Dexter Regional Airport.

DATES: Effective 0901 UTC, October 10, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 18, 1996.

ADDRESSES: Send comments on the proposal to: Manager, Operations Branch, ANE–530, Federal Aviation Administration, Docket No. 96–ANE–23, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596. Comments may also be submitted electronically to the following Internet address: ''neairspace-comments@mail.hq.faa.gov'' Comments must indicate Docket No. 96–ANE–23 in the subject line.

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

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

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

SUPPLEMENTARY INFORMATION:

A new Standard Instrument Approach Procedure to Dexter Regional Airport, the GPS RWY 34 approach, requires the establishment of Class E airspace extending upward from 700 feet above the surface in the vicinity of Dexter, ME. This action provides adequate controlled airspace for those aircraft using the new GPS RWY 34 instrument approach. Class E airspace designations for airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ANE–23.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

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

Paragraph 6005-Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE ME E5 Dexter, ME [New]

Dexter Regional Airport, ME
(Lat. 45°00′16″N, long. 69°14′12″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Dexter Regional Airport.

* * * * *

Issued in Burlington, MA, on August 12, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–21093 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 96–ANE–22]

Establishment of Class E Airspace; Oxford, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes a Class E airspace area at Oxford, ME (K81B) to provide for adequate controlled airspace for those aircraft using the new GPS RWY 33 Instrument Approach Procedure to Oxford County Regional Airport.

DATES: Effective 0901 UTC, October 10, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 18, 1996.

ADDRESSES: Send comments on the proposal to: Manager, Operations Branch, ANE–530, Federal Aviation Administration, Docket No. 96–ANE–22, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596. Comments may also be submitted electronically to the following Internet address: ''neairspace-comments@mail.hq.faa.gov'' Comments must indicate Docket No. 96–ANE–22 in the subject line.

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

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

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

SUPPLEMENTARY INFORMATION: A New Standard Instrument Approach Procedure to Oxford County Regional Airport the GPS RWY 33 approach, requires the establishment of Class E airspace extending upward from 700 feet above the surface in the vicinity of Oxford, ME. This action provides adequate controlled airspace for those aircraft using the new GPS RWY 33 instrument approach. Class E airspace designations for airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ANE–22.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this

regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

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

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

* * * * *

ANE ME E5 Oxford, ME [New]

Oxford County Regional Airport, ME
(Lat. 44°09′27″N, long. 70°28′53″W)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of Oxford County Regional Airport; excluding that airspace within the Auburn, ME Class E airspace area.

* * * * *

Issued in Burlington, MA, on August 12, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–21092 filed 8–16–96; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33–7320; IC–22135; S7–34–93]

RIN 3235–AE17

Revisions to Rules Regulating Money Market Funds

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; suspension of compliance date.

SUMMARY: The Commission is suspending the compliance date set forth in a final rule, which contains amendments to rules and forms that govern money market funds.

EFFECTIVE DATES: The effective date for the rule and form amendments published on March 28, 1996 (61 FR 13956) remains June 3, 1996. Effective August 19, 1996, the compliance date with respect to certain of the amendments adopted in that rule is suspended. The Commission will publish in the Federal Register a document notifying the public of a new compliance date.

FOR FURTHER INFORMATION CONTACT: Marjorie S. Riegel, Senior Counsel, Office of Chief Counsel (202) 942–0727, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is suspending the compliance date in connection with amendments to rules 2a–7, 2a41–1, 12d–3 and 31a–1 [17 CFR 270.2a–7, 270.2a41–1, 270.12d–3 and 270.31a–1] under the Investment Company Act of 1940 [15 U.S.C. 80a–1, *et seq.*] (the ''March Amendments'').[1] Section V.A of the release adopting the March Amendments (the ''March Release'') provided that money market funds would be required to comply with certain of the March Amendments by October 3, 1996.[2] The Commission anticipates that it will be proposing technical amendments (''Technical Amendments'') to certain of the March Amendments, which are not expected to be adopted before October 3, 1996. Therefore, the Commission is suspending the October 3, 1996 compliance date, and will establish a new compliance date for the March Amendments subject to Section V.A.[3] This new compliance date will be published in the Federal Register in connection with the adoption of the Technical Amendments.[4] The compliance date with respect to certain of the March Amendments adopted in 61 FR 13956 is suspended effective upon publication of this release in the Federal Register because such suspension ''grants or recognizes an exemption or relieves a restriction.''[5]

The Commission notes that Section V.C of the March Release set forth compliance dates for certain disclosure, advertising and reporting requirements for money market funds. These requirements will not be affected by the Technical Amendments. The Commission is not suspending the compliance dates for these requirements, and all money market funds are required to comply with these requirements by the compliance dates set forth in the March Release.

Dated: August 13, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21056 Filed 8–16–96; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Investment Company Act Rel. No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)].

[2] *Id.*

[3] Money market funds may comply with any of the amendments or rules adopted in the March Release prior to the new compliance date. *See* Section V.A. of the March Release.

[4] Section V.B of the March Release ''grandfathered'' certain securities by providing that money market funds could continue to purchase such securities issued on or before June 3, 1996 (the ''Grandfathering Date''). The Commission intends to publish in the Federal Register a new Grandfathering Date for securities of the type described in Section V.B of the March Release. Such securities issued prior to the new Grandfathering Date may continue to be purchased and held by money market funds relying on the rule.

[5] 5 U.S.C. 553(d)(1).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203 and 221

[Docket No. FR–3899–C–02]

RIN 2502–AG55

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Single Family Mortgage Insurance Premium; Correction to Final Rule

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; Correction.

SUMMARY: On July 19, 1996 (61 FR 37798), the Department published in the

Federal Register, a final rule that finalized a proposed rule published by the Department on January 26, 1996, which proposed many benefits to the mortgage lenders that would reduce their servicing costs and the confusion generated by adjustments to the annual mortgage insurance premium (MIP) on cases not endorsed within the first six months after amortization. The purpose of this document is to remove a redundant sentence in the preamble of the rule and to make a clarifying change to § 203.264.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: John L. Sahl, Acting Director, Office of Mortgage Insurance Accounting and Servicing, Room 2108, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410, telephone (202) 708–1046. For telephone communication, contact Anne Baird-Bridges, Single Family Insurance Operations Division, at (202) 708–2438. Hearing or speech-impaired individuals may call HUD's TTY number (202) 708–4594. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Accordingly, corrections are made to FR Doc. 96–18354, a final rule on Single Family Mortgage Insurance Premium, published in the Federal Register on July 19, 1996 (61 FR 37798), as follows:

1. On page 37798, in the first column, the preamble is corrected by removing the third sentence in paragraph 2 of the **SUMMARY** that reads, ''A new system is being developed (and expected to be operational by Summer 1997) which would produce a monthly notice of premiums due, and the reconciliation will be made monthly by the lender when the premium is paid.''

2. On page 37801, § 203.264 is correctly revised to read as follows:

§ 203.264 Payment of periodic MIP.

The mortgagee shall pay each MIP in twelve equal monthly installments. Each monthly installment shall be due and payable to the Commissioner no later than the tenth day of each month, beginning in the month in which the mortgagor is required to make the first monthly mortgage payment. This will be effective for amortization beginning on or after September 1, 1996.

Dated: August 14, 1996.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 96–21031 Filed 8–16–96; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Final Policy on Examination of Working Places

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; policy.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its policy concerning the examination of working places at all metal and nonmetal mining operations to clarify operators' obligations under 30 CFR 56.18002 and 57.18002, Examination of Working Places. To ensure that all interested persons are informed of this action, MSHA is publishing the full text of the Program Policy Letter addressing these standards in Appendix I of this notice. This policy letter supersedes MSHA's existing policy regarding enforcement of these standards.

EFFECTIVE DATE: November 18, 1996.

FOR FURTHER INFORMATION CONTACT: Rodric Breland, Chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, 703–235–8647.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirement in §§ 56.18002 and 57.18002 has been approved by the Office of Management and Budget under control number 1219–0089.

II. Discussion of Final Policy

MSHA's safety standards in §§ 56.18002 and 57.18002 concerning examination of working places at metal and nonmetal mines were first promulgated as advisory standards in July 1969 and became mandatory in August 1979. MSHA issued Program Policy Letter (PPL) No. P94–IV–5 on December 12, 1994, clarifying its policy concerning these standards. Shortly thereafter, MSHA introduced a new procedure to encourage participation in enforcement policy formulation and withdrew the PPL concerning examination of working places. Subsequently, the PPL was revised and published in the Federal Register (60 FR 9987) on February 22, 1995 and public input was solicited. The Agency also held public meetings on July 6 and 7, 1995, in Cleveland, Ohio; and July 12 and 13, 1995, in Elko, Nevada. MSHA received comments from both labor and industry, and considered these comments in the development of this final policy.

The Agency is now publishing the final policy in the Federal Register to ensure that all interested parties are informed. MSHA also will issue this policy as Program Policy Letter No. P96–IV–2 and as an update to the Program Policy Manual, Volume IV, pages 61 and 62. The full text of this Program Policy Letter is published in Appendix I of this notice. This policy letter supersedes MSHA's existing policy regarding enforcement of these standards.

Dated: August 8, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Appendix I—Program Policy Letter No. P96–IV–2—30 CFR 56.18002 and 57.18002—Examination of Working Places

Effective Date: November 18, 1996.
Expiration Date: 3/31/97.

Program Policy Letter No. P96–IV–2

From: Vernon R. Gomez, Administrator for Metal and Nonmetal Mine Safety and Health.

Subject: 30 CFR 56.18002 and 57.18002—Examination of working places.

Scope

This policy letter applies to metal and nonmetal mine operators and Metal and Nonmetal Mine Safety and Health Administration (MSHA) enforcement personnel.

Purpose

This policy letter revises MSHA's existing policy regarding enforcement of its standards in Title 30, Code of Federal Regulations (30 CFR) §§ 56.18002 and 57.18002, Examination of working places, to clarify operators' obligations under these standards. MSHA also is revising this policy in MSHA's Program Policy Manual, Volume IV, pages 61 and 62.

Mine operators are responsible for preventing unsafe conditions and practices and correcting safety and health hazards before miners become exposed to them. MSHA believes that regular working place examinations are fundamental to the prevention of accidents in the mining industry. MSHA standards in 30 CFR 56.18002 and 57.18002 require the operator to conduct a regular examination of working areas for hazards. As a result, miners will be ensured a safer and more healthful mine environment.

Policy

30 CFR §§ 56/57.18002, Examination of working places, provide:

(a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for

a period of one year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, conditions that may present an imminent danger which are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

MSHA intends that the terms ''competent person'' and ''working place,'' used in §§ 56/57.18002(a), be interpreted as defined in §§ 56.2 and 57.2, Definitions.

A ''competent person,'' according to §§ 56.2 and 57.2, is ''a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.'' This definition includes any person who, in the judgment of the operator, is fully qualified to perform the assigned task. MSHA does not require that a competent person be a mine foreman, mine superintendent, or other person associated with mine management.

The phrase ''working place'' is defined in 30 CFR §§ 56.2 and 57.2 as: ''any place in or about a mine where work is being performed.'' As used in the standard, the phrase applies to those locations at a mine site where persons work during a shift in the mining or milling processes.

Standards 56/57.18002(b) require operators to keep records of working place examinations. These records must include: (1) the date the examination was made; (2) the examiner's name; and (3) the working places examined. MSHA intends to allow operators considerable flexibility in complying with this provision in order to minimize the paperwork burden.

Records of examinations may be entered on computer data bases or documents already in use, such as production sheets, logs, charts, time cards, or other format that is more convenient for mine operators.

In order to comply with the record retention portion of §§ 56.18002(b) and 57.18002(b), operators must retain workplace examination records for the preceding 12 months. As an alternative to the 12-month retention period, an operator may discard these records after MSHA has completed its next regular inspection of the mine, if the operator also certifies that the examinations have been made for the preceding 12 months.

Evidence that a previous shift examination was not conducted or that prompt corrective action was not taken will result in a citation for violation of §§ 56.18002 and 57.18002 (a) or (c). This evidence may include information which demonstrates that safety or health hazards existed prior to the working shift in which they were found. Although the presence of hazards covered by other standards may indicate a failure to comply with this standard, MSHA does not intend to cite §§ 56.18002 and 57.18002 automatically when the Agency finds an imminent danger or a violation of another standard.

Background

Failure to conduct working place examinations has been a contributing cause of a significant number of recent accidents. In the 5-year period from 1988–1992, MSHA has investigated 17 serious and fatal accidents where working place examinations were not conducted or were inadequately conducted and were found to have contributed to the cause of the accident.

Authority

30 CFR §§ 56.18002 and 57.18002.

Filing Instructions

This policy letter should be filed after the tab ''Program Policy Letters,'' located behind Volume IV of the Program Policy Manual.

Issuing Office and Contact Person

Metal and Nonmetal Mine Safety and Health, Division of Safety, Richard Feehan, 703–235–8647

Distribution

Program Policy Manual Holders
Metal and Nonmetal Mine Operators
Metal and Nonmetal Independent Contractors
Metal and Nonmetal Special Interest Groups

[FR Doc. 96–20987 Filed 8–16–96; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–107–FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of statutory changes contained in Virginia House Bill 706 and the implementing regulations, both of which address sudden release of accumulated water from underground coal mine voids. The amendment is intended to improve the effectiveness of the Virginia program.

EFFECTIVE DATES: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated April 17, 1996 (Administrative Record No. VA–876), Virginia submitted amendments to § 45.1–243 of the Code of Virginia contained in Virginia House Bill 706, and concerning the sudden release of accumulated water from underground coal mine voids. Virginia also submitted the proposed implementing regulations at § 480–03–19.784.14 concerning hydrologic information for reclamation and operations plans, and § 480–03–19.817.41 concerning performance standards for hydrologic balance protection.

The proposed amendment was published in the May 3, 1996, Federal Register (61 FR 19885), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on June 3, 1996.

III. Director's Findings

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

The amendments proposed by Virginia are as follows:

1. § 45.1–243 of the Code of Virginia is amended by adding a new subsection to read as follows:

B. The Director's regulations shall require that permit applicants submit hydrologic reclamation plans that include measures that will be utilized to prevent the sudden release of accumulated water from underground workings.

2. § 480–03–19.784.14(g) of the Virginia regulations is amended to add

the requirement that the hydrologic reclamation plan shall also include identification of the measures to be taken to prevent the sudden release of accumulated water from the underground workings.

3. § 480–03–19.817.41(i) is amended by adding new subparagraph (3) to read as follows:

(i)(3) Except where surface entries and accesses to underground workings are located pursuant to (i)(1) of this Section, an unmined barrier of coal shall be left in place where the coal seam dips toward the land surface. The unmined barrier and associated overburden shall be designed to prevent the sudden release of water that may accumulate in the underground workings.

(i)(3)(i) The applicant may demonstrate the appropriate barrier width and overburden height by either:

(A) providing a site specific design, certified by a qualified registered professional engineer, which considers the overburden and barrier characteristics; or

(B) providing the greater barrier width necessary for a minimum of 100 feet of vertical overburden or for an unmined horizontal barrier calculated by the formula: W=50+H, when W is the minimum width in feet and H is the calculated hydrostatic head in feet.

(i)(3)(ii) Exception to the barrier requirement may be approved provided the Division finds, based upon the geologic and hydrologic conditions, an accumulation of water in the underground workings cannot reasonably be expected to occur or other measures taken by the applicant are adequate to prevent the accumulation of water.

There are no Federal counterparts to the Virginia amendments. The Director finds, however, that the amendments are reasonable, and not inconsistent with SMCRA and the Federal regulations. The Virginia amendments are technically sound, and will add an increased measure of protection from the hazards of sudden releases of accumulated water from underground workings.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Department of Agriculture, Natural Resources Conservation Service responded and recommended that the amendments be accepted. The U.S. Fish and Wildlife Service responded and stated that the proposed regulatory changes are not likely to adversely affect threatened or endangered species or critical habitats.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that it may be useful for the State to develop the criteria that would be employed to measure the phrase ''cannot reasonably be expected'' that appears at proposed § 480–03–19.817.41(i)(3)(ii). The provision provides for an exception to the barrier width requirement of (i)(3)(i) when site specific conditions indicate there will be no accumulation of water. In response to the MSHA comment, the Division of Mines, Minerals and Energy (DMME) said that it chose not to specify in the proposed amendment each circumstance an applicant may be able to demonstrate that water ''cannot reasonably be expected'' to accumulate within the abandoned mine voids. DMME stated that it intends to depend upon conservative scientific principles in evaluating each case specific demonstration. DMME intends to consider the availability/proximity of water to the underground voids as well as the geohydrologic parameters that may affect the ability of the voids to hold such waters under head. In response, the Director believes the DMME approach to be reasonable and has determined in the Finding above, that the proposed amendments are not inconsistent with SMCRA and the Federal regulations.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the May 3, 1996, Federal Register (61 FR 19885). The comment period closed on June 3, 1996. No comments were received and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA. EPA responded on June 20, 1996 (Administrative Record No. VA–891) and stated that the amendment is in compliance with the Clean Water Act and offered no additional comments.

V. Director's Decision

Based on the findings above, the Director is approving Virginia's amendment concerning sudden release of accumulated water from underground coal mine voids as submitted by Virginia on April 17, 1996.

The Federal regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determined of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 946

Intergovernmetal relations, Surface mining, Underground mining.

Dated: July 30, 1996.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

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

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

2. In § 946.15, paragraph (kk) is added to read as follows:

§ 946.15 Approval of regulatory program amendments

* * * * *

(kk) The amendment to the Virginia program concerning the sudden release of accumulated water from underground coal mine voids as submitted to OSM on April 17, 1996, is approved effective August 19, 1996.

[FR Doc. 96–21083 Filed 8–16–96; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No: 950620162–6014–02]

RIN 0651–AA75

Miscellaneous Changes in Patent Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent cases to implement a number of miscellaneous changes proposed in the rulemaking entitled ''Changes to Implement 18-Month Publication of Patent Applications'' (Notice of Proposed Rulemaking), published in the Federal Register at 60 FR 42352 (August 15, 1995), and in the Patent and Trademark Office Official Gazette 1177 Off. Gaz. Pat. Office 61 (August 15, 1995), that are not directly related to the 18-month publication of patent applications. While the proposed rule changes in the Notice of Proposed Rulemaking were designed primarily to implement the changes in practice related to the publication of patent applications provided for in H.R. 1733, these miscellaneous proposed changes clarify current rules of practice, without regard to the publication of patent applications.

DATES: *Effective Date:* September 23, 1996.

Applicability Date: Sections 1.52 (a) and (b), 1.58, 1.72 (b), 1.75 (g), (h) and (i), 1.77, 1.84 (c), (f), (g) and (x), 1.96, 1.154, and 1.163 of 37 CFR apply to applications filed on or after September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen G. Kunin by telephone at (703) 305–8850, by facsimile at (703) 305–8825, by electronic mail at rbahr@uspto.gov, or Jeffrey V. Nase by telephone at (703) 305–9285, or by mail marked to the attention of Stephen G. Kunin, addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231. For copies of the forms discussed in this final rule package, contact the Customer Service Center of the Office of Initial Patent Examination at (703) 308–1214.

SUPPLEMENTARY INFORMATION: This final rule package is designed to implement the miscellaneous changes set forth in the proposed rulemaking entitled ''Changes to Implement 18-Month Publication of Patent Applications'' (Notice of Proposed Rulemaking) that are not directly related to 18-month publication of patent applications and that are considered desirable even in the absence of an 18-month publication system.

The Notice of Proposed Rulemaking indicated that, in addition to implementing the 18-month publication of patent applications, the Office also proposed to: (1) Clarify which applications claiming the benefit of prior applications, or which prior applications for which a benefit is claimed in a later application, will be preserved in confidence; (2) amend the rules pertaining to the format and standards for application papers and drawings to improve the standardization of patent applications; (3) provide for those instances in which inventions of a pending application or patent under reexamination and inventions of a patent held by a single party are not identical, but not patentably distinct; (4) clarify the practice for the delivery or mailing of patents; (5) expedite the entry of international applications into the national stage; and (6) amend a number of rules for consistency and clarity. The Notice of Proposed Rulemaking stated that these proposed rule changes may be adopted as final rules even in the absence of an 18-month publication system, and advised interested persons to comment on any proposed rule change, regardless of whether H.R. 1733 is enacted.

To avoid delays in the implementation of rule changes considered desirable even in the absence of an 18-month publication system, this final rule package provides for changes to 37 CFR 1.12(c), 1.14, 1.52 (a) and (b), 1.54, 1.58, 1.62 (e) and (f), 1.72(b), 1.75(g), 1.77, 1.78 (a) and (c), 1.84 (c), (f), (g) and (x), 1.96, 1.97, 1.107, 1.110, 1.131, 1.132, 1.154, 1.163, 1.291, 1.292, 1.315, 1.321 and 1.497, and adds new §§ 1.5(f), 1.75 (h) and (i), and 1.130, all of which are based upon the changes proposed in the Notice of Proposed Rulemaking.

Implementation of 18-Month Publication Held in Abeyance Pending Congressional Action on H.R. 1733

The Notice of Proposed Rulemaking also proposed changes to 37 CFR 1.4, 1.5(a), 1.9, 1.11, 1.12 (a) and (b), 1.13, 1.16, 1.17, 1.18, 1.19, 1.20, 1.24, 1.51, 1.52(d), 1.53, 1.55, 1.60, 1.78(a), 1.84(j), 1.85, 1.98, 1.108, 1.136, 1.138, 1.492, 1.494, 1.495, 1.701, 1.808, 3.31, 5.1, new §§ 1.5(g), 1.306 through 1.308 and 5.9,

and further changes to §§ 1.14, 1.54, 1.62, 1.107, 1.131, 1.132, 1.291 and 1.292 to implement the 18-month publication of patent applications as contained in H.R. 1733 and provide procedures for the treatment of national security classified applications. The adoption of changes to these rules is held in abeyance pending Congressional action on H.R. 1733.

The proposed rule changes in the Notice of Proposed Rulemaking to provide new procedures for the treatment of national security classified applications are also being held in abeyance. These proposed rule changes are separable from the implementation of 18-month publication; however, they are sufficiently related to the implementation of 18-month publication that they are also being held in abeyance pending Congressional action on H.R. 1733.

In the event that H.R. 1733 is enacted, a final rule package to implement this legislation will be published. Final rules to implement 18-month publication of patent applications based upon the Notice of Proposed Rulemaking and the comments received in response to the Notice of Proposed Rulemaking may be adopted without either an additional public hearing or an additional proposal being published for comment.

Implementation of the Miscellaneous Changes Proposed in the Notice of Proposed Rulemaking

The following paragraphs of this section include: (1) A discussion of the rules being added or amended in this final rule package, (2) the reasons for those additions and amendments, and (3) an analysis of the comments received in response to the Notice of Proposed Rulemaking.

Changes to Proposed Rules

These final rules contain a number of changes to the text of the rules as proposed for comment. The significant changes are discussed below. Familiarity with the Notice of Proposed Rulemaking is assumed.

Sections 1.14 (a) and (b) have been re-written for clarity. Section 1.14(a)(1) provides that patent applications are generally preserved in confidence. Section 1.14(a)(2) sets forth the circumstances under which status information concerning an application may be supplied, and § 1.14(a)(3) sets forth the circumstances under which access to, or copies of, an application may be provided. Section 1.14(b) provides that abandoned applications may be destroyed after 20 years from their filing date. The reference to paragraph (b) in § 1.14(e) has been deleted for consistency with the changes to paragraphs (a) and (b) of § 1.14.

Section 1.52(a) is being changed to provide that all papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly ''written either by a typewriter or mechanical printer in permanent dark ink or its equivalent,'' rather than ''typed in permanent dark ink.'' This change will permit the filing of papers printed by any computer operated printer, such as a laser printer which uses toner rather than ink, and will avoid a conflict between § 1.52(a) and Patent Cooperation Treaty (PCT) Rule 11.9. The phrase ''when required by the Office'' was also added to § 1.52(a).

Section 1.52(b) is being changed to provide that: (1) The application papers must be plainly written with each page printed on only one side of a sheet of paper, with the claim or claims commencing on a separate sheet and the abstract commencing on a separate sheet; (2) the lines of the specification, and any amendments to the specification, must be 1½ or double spaced; and (3) the pages of the specification including claims and abstract must be numbered consecutively, starting with 1, the numbers being centrally located above or preferably, below, the text. This change will clarify: (1) The separate sheet requirement for both the claims and abstract, (2) that the lines of the papers not comprising the specification and amendments thereto need not be 1½ or double spaced, and (3) that the specification, and not the transmittal sheets or other forms, must be numbered.

Section 1.58 is being changed to provide that chemical and mathematical formulae and tables must be presented in compliance with §§ 1.52 (a) and (b), except that chemical and mathematical formulae or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation. This replaces the requirement that ''[t]o facilitate camera copying when printing, the width of formulas and tables as presented should be limited normally to 12.7 cm. (5 inches) so that it may appear as a single column in the printed patent.'' However, chemical and mathematical formulae and tables must still otherwise comply with §§ 1.52 (a) and (b). This change will avoid a conflict between § 1.58 and PCT Rule 11.10(d). Section 1.58 is also being changed to require ''0.21 cm.'' rather than ''2.1 mm.'' to ensure consistency.

Section 1.72 is being changed to provide that the abstract must commence on a separate sheet, preferably following the claims. This change will avoid renumbering pages of a specification submitted in the arrangement set forth in § 1.77 when filing the application as an international application.

Section 1.75(h) is being changed to provide that the claim or claims must commence on a separate sheet. This change will clarify that § 1.75 requires that the claim or claims commence or begin on a separate sheet, rather than requiring that all of the claims must be on a single separate sheet or that each claim must be on a separate sheet.

Section 1.77 is being changed to position the abstract as element ''(12)'' following the claims, rather than element ''(3)'' prior to the first page of the specification to conform to § 1.72.

Section 1.78(a)(2) is being changed to replace the reference to § 1.14(b) with a reference to § 1.14(a).

Section 1.78(c) is being changed to replace the phrase ''[w]here an application or a patent under reexamination and an application or a patent'' with the phrase ''[w]here an application or a patent under reexamination and at least one other application,'' since conflicting claims between an application or a patent under reexamination and a patent will be provided for in new § 1.130. Section 1.78(c) is also being changed to delete the sentence ''[i]n addition to making said statement, the assignee may also explain why an interference should or should not be declared,'' since the Office will not, unless good cause is shown, declare or continue an interference when the application(s) and patent are owned by a single party.

Section 1.78(d) is removed. The provisions of § 1.78(d), as proposed, are in new § 1.130(b), since § 1.130 provides for conflicting claims between an application or a patent under reexamination and a patent.

Section 1.84(x) is being changed from ''[n]o holes should be provided in the drawings sheets'' to ''[n]o holes should be made by the applicant in the drawing sheets'' to clarify that the application papers, including drawings, should be submitted by the applicant without holes provided therein, but that the Office will drill holes through the application papers during the pre-examination processing of the application.

Section 1.96(b) is being changed to provide that a listing submitted as part of the specification ''must be direct printouts (*i.e.*, not copies) from the computer's printer'' for clarity.

Section 1.96(c) is being changed to substitute a reference to 36 CFR Part

1230 (Micrographics) for the enumerated American National Standards Institute (ANSI) and National Micrographics Association (NMA) standards. As 36 CFR Part 1230 sets forth the micrographic requirements for government records, it is appropriate to reference this provision, rather than promulgate separate standards for micrographics employed in patent applications.

Section 1.97 is being changed to delete any reference to a reexamination proceeding or a patent owner. The submission of an information disclosure statement during a reexamination proceeding is governed by § 1.555(a).

Section 1.97(a) is being changed from ''[i]n order for an applicant for patent or for reissue of a patent to have information considered by the Office during the pendency of a patent application, an information disclosure statement in compliance with § 1.98 should be filed in accordance with this section'' to ''[i]n order for an applicant for a patent or for a reissue of a patent to have an information disclosure statement in compliance with § 1.98 considered by the Office during the pendency of the application, it must satisfy paragraph (b), (c), or (d) of this section'' for clarity. Sections 1.97 (c) and (d) are also being changed to clarify the conditions in § 1.97(c) under which a certification as specified in § 1.97(e) or the fee set forth in § 1.17(p) is required, and the conditions in § 1.97(d) under which a certification as specified in § 1.97(e), a petition, and the petition fee set forth in § 1.17(i) are required.

Section 1.110 is amended to change the reference to § 1.78(d) to a reference to § 1.130 for consistency.

The proposed addition of a new § 1.131(a)(3) is being withdrawn in this final rule package. This proposed change, as well as the provisions of former § 1.78(d), has been re-written as a new § 1.130. New § 1.130(a) will provide a procedure for the disqualification of a commonly owned patent claiming a patentably indistinct but not identical invention. New § 1.130(b) will include the provisions of former § 1.78(d).

Section 1.131(a) is being changed to replace the phrase ''U.S. patent to another'' with ''U.S. patent to another or others.''

Section 1.154(a)(7) is being changed to add ''[f]eature'' prior to ''[d]escription,'' and § 1.154(a)(8) is being changed to add ''a single'' prior to ''claim.''

Section 1.163 is being changed to position the abstract as element ''(11)'' following the claims, rather than element ''(3)'' prior to the first page of the specification. This change will parallel the change to § 1.77. In addition, § 1.163(c)(10) is being changed to add ''a single'' prior to ''claim.''

Section 1.497(b)(2) is being changed to provide that ''[i]f the person making the oath or declaration is not the inventor, the oath or declaration shall state the relationship of the person to the inventor, the facts required by §§ 1.42, 1.43 or 1.47, and, upon information and belief, the facts which the inventor would have been required to state'' to better set forth the requirements of an oath or declaration by a person who is not the inventor. Section 1.497(c) is being changed to delete the initial phrase ''[t]he oath or declaration must comply with the requirements of § 1.63; however,'' since it is unnecessary.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1 is amended as follows:

Section 1.5(f) is added to provide that a paper concerning a provisional application must identify the application as such and by the application number.

Section 1.12 is amended to revise paragraph (c) to read ''preserved in confidence under § 1.14'' for consistency with § 1.14.

Section 1.14 is amended to revise the title and paragraphs (a) and (e) to read ''preserved in confidence'' for consistency with the language in 35 U.S.C. 122.

Section 1.14(a) is amended to add a paragraph (a)(1) to provide that patent applications are generally preserved in confidence pursuant to 35 U.S.C. 122, and that no information will be given concerning the filing, pendency, or subject matter of any application for patent, and no access will be given to, or copies furnished of, any application or papers relating thereto, except as set forth in § 1.14.

Section 1.14(a) is also amended to add a paragraph (a)(2) to provide that status may be supplied: (1) Concerning an application or any application claiming the benefit of the filing date of the application, if the application has been identified by application number or serial number and filing date in a published patent document; (2) concerning the national stage application or any application claiming the benefit of the filing date of a published international application, if the United States of America has been indicated as a Designated State in the international application; or (3) when it has been determined by the Commissioner to be necessary for the proper conduct of business before the Office. Status information includes information such as whether the application is pending, abandoned, or patented, as well as the application number and filing date. The inclusion of applications claiming the benefit of the filing date of applications so identified is to avoid misleading the public in instances in which the application identified as set forth in § 1.14(a)(2) is abandoned, but an application claiming the benefit of the filing date of the identified application (*e.g.*, a continuing application) is pending.

Section 1.14(a) is also amended to add a new paragraph (a)(3) to provide that access to, or copies of, an application may be provided: (1) When the application is open to the public as provided in § 1.11(b); (2) when written authority in that application from the applicant, the assignee of the application, or the attorney or agent of record has been granted; (3) when it has been determined by the Commissioner to be necessary for the proper conduct of business before the Office, or (4) to any person on written request, without notice to the applicant, when the application is abandoned and available and is: (a) Referred to in a U.S. patent, (b) referred to in an application open to public inspection, (c) an application which claims the benefit of the filing date of an application open to public inspection, or (d) an application in which the applicant has filed an authorization to lay open the complete application to the public.

Section 1.14(b) is amended to provide that complete applications (§ 1.51(a)) which are abandoned may be destroyed and hence may not be available for access or copies as permitted by paragraph (a)(3)(iv) of this section after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation. The sentence in § 1.14(b) concerning the non-return of abandoned applications is deleted as duplicative of the provision in § 1.59, which provides that papers in an application which has received a filing date will not be returned, and is unrelated to the preservation of applications in confidence under § 1.14.

Section 1.52(a) is amended to provide that all papers which are to become a part of the permanent records of the Office must be legibly written by a typewriter or mechanical printer in permanent dark ink or its equivalent in portrait orientation on flexible, strong, smooth, non-shiny, durable and white paper. Section 1.52(a) is further amended to provide that the application papers must be presented in a form

having sufficient clarity and contrast between the paper and the writing thereon to permit electronic reproduction by use of digital imaging and optical character recognition, as well as the direct photocopy reproduction currently provided for. Section 1.52(a) is further amended to provide that substitute typewritten or mechanically printed papers ''will'' be required if the original application papers are not of the required quality. As any substitute typewritten or mechanically printed papers containing the subject matter of the originally filed application papers would constitute a substitute specification, the provisions of § 1.125 governing the entry of a substitute specification would be applicable, and § 1.52(a) is amended to include a specific reference to § 1.125.

Section 1.52(b) is amended to provide that the claim or claims must commence on a separate sheet and the abstract must commence on a separate sheet. Section 1.72(b) provides that the abstract must commence on a separate sheet, and § 1.75(h) provides that the claim or claims must commence on a separate sheet. Section 1.52(b) is amended to provide that the sheets of paper must all be the same size and either 21.0 cm. by 29.7 cm. (DIN size A4) or 21.6 cm. by 27.9 cm. (8½ by 11 inches), with a top margin of at least 2.0 cm. (¾ inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 2.0 cm. (¾ inch), and a bottom margin of at least 2.0 cm. (¾ inch), and that no holes should be made in the submitted paper sheets. Section 1.52(b) is further amended to provide that the lines of the specification, and any amendments to the specification, ''must'' be 1½ or double spaced, and that the pages of the specification ''must'' be numbered consecutively, starting with page one, with the numbers being centrally located above or below the text. Finally, § 1.52(b) is amended to specifically reference drawings to clarify that drawings are part of the application papers, but that the standards for drawings are set forth in § 1.84.

The proposed changes to §§ 1.52 (a) and (b), 1.58, 1.72(b), 1.75 (g), (h), and (i), 1.77, 1.84 (c), (f), (g), and (x), 1.96, 1.154, and 1.163 pertaining to the format and standards for application papers and drawings in the Notice of Proposed Rulemaking are considered desirable, regardless of whether H.R. 1733 is enacted.

While the vast majority of applications currently comply with §§ 1.52 (a) and (b), 1.58, 1.72(b), 1.75(h), 1.84 (c), (f), (g), and (x), and 1.96 as adopted in this final rule, those applications which do not comply with §§ 1.52 (a) and (b), 1.58, 1.84 (c), (f), (g), and (x), and 1.96 as adopted in this final rule (*e.g.*, applications containing hand-written papers) create an inordinate administrative burden on the Office during the initial processing, examination, and publishing of the application as a patent. In addition, the Office plans to replace or augment the current microfilming process with electronic data capture of at least the technical content (*i.e.*, the specification, abstract, claims and drawings) of the application-as-filed for internal Office use, regardless of whether H.R. 1733 is enacted. Therefore, the Office will no longer permit these relatively few applicants to submit application papers and drawings that do not meet the standards set forth in §§ 1.52 (a) and (b), 1.58, 1.84 (c), (f), (g), and (x), and 1.96 as adopted in this final rule.

The application format set forth in §§ 1.75 (g) and (i), 1.77, 1.154, and 1.163 as adopted in this final rule merely expresses the Office's preferences for format of utility, design and plant applications. They do not set forth mandatory requirements for application papers and drawings.

Section 1.54(b) is amended to change ''application serial number'' to ''application number'' for consistency with § 1.5(a).

Section 1.58(b) is removed and is reserved as unnecessary in view of the amendments to §§ 1.52 (a) and (b).

Section 1.58(c) is amended to provide that chemical and mathematical formulae and tables must be presented in compliance with §§ 1.52 (a) and (b), except that chemical and mathematical formulae or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation. Section 1.58(c) is further amended to delete the following sentences to conform to the writing and paper size and orientation limitations in §§ 1.52 (a) and (b): (1) ''[t]o facilitate camera copying when printing, the width of formulas and tables as presented should be limited normally to 12.7 cm. (5 inches) so that it may appear as a single column in the printed patent''; (2) ''[i]f it is not possible to limit the width of a formula or table to 5 inches (12.7 cm.), it is permissible to present the formula or table with a maximum width of 10¾ inches (27.3 cm.) and to place it sideways on the sheet''; and (3) ''[h]and lettering must be neat, clean, and have a minimum character height of 0.08 inch (2.1 mm.).'' Section 1.58(c) is further amended to insert ''chosen'' between ''must be'' and ''from a block (nonscript) type font.'' Section 1.58(c) is further amended to provide metric dimensions with English equivalents in parentheticals, rather than *vice versa*.

Section 1.62(e) is amended to change ''application serial number'' to ''application number'' for consistency with § 1.5(a).

Section 1.62(f) is amended to change ''secrecy'' to ''confidence'' as is found in 35 U.S.C. 122 and § 1.14, and change ''37 CFR 1.14'' to ''§ 1.14'' for consistency.

Section 1.72(b) is amended to provide that the abstract must ''commence,'' rather than ''be set forth,'' on a separate sheet. This change will conform the ''separate sheet'' requirement for the abstract with that for the claims.

Section 1.75 is amended to include an amendment to paragraph (g), and would add two new paragraphs. Section 1.75(g) is amended to add the phrase ''[t]he least restrictive claim should be presented as claim number 1'' to the beginning of the paragraph. Section 1.75(h) is added to provide that the claim or claims must commence on a separate sheet. Section 1.75(i) is added to provide that where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation.

Section 1.77 is amended to provide that the elements of the application, if applicable, should appear in the following order: (1) Utility Application Transmittal Form; (2) Fee Transmittal Form; (3) title of the invention; or an introductory portion stating the name, citizenship, and residence of the applicant, and the title of the invention; (4) cross-reference to related applications; (5) statement regarding federally sponsored research or development; (6) reference to a ''Microfiche appendix; (7) background of the invention; (8) brief summary of the invention; (9) brief description of the several views of the drawing; (10) detailed description of the invention; (11) claim or claims; (12) abstract of the disclosure; (13) drawings; (14) executed oath or declaration; and (15) sequence listing.

The phrase ''if applicable'' is inserted in the heading, rather than associated with any particular listed element, to clarify that § 1.77 does not *per se* require that an application include all of the listed elements, but merely provides that any listed element included in the application should appear in the order set forth in § 1.77. Section 1.77 is further amended to provide that the (1) title of the invention; (2) cross-reference to related applications; (3) statement regarding federally sponsored research or development; (4) background of the invention; (5) brief summary of the

invention; (6) brief description of the several views of the drawing; (7) detailed description of the invention; (8) claim or claims; (9) abstract of the disclosure; and (10) sequence listing, should appear in upper case, without underlining or bold type, as section headings, and if no text follows the section heading, the phrase ''Not Applicable'' should follow the section heading. Finally, § 1.77 is amended to change the reference to § 1.96(b) in § 1.77(a)(6) to § 1.96(c) for consistency with § 1.96.

Section 1.78(a)(2) is amended to replace the reference to § 1.14(b) with a reference to § 1.14(a) for consistency with §§ 1.14 (a) and (b) as amended.

Section 1.78(c) is amended to change ''two or more applications, or an application and a patent'' to ''an application or a patent under reexamination and at least one other application'' such that the provisions of § 1.78(c) will also be applicable to a patent under reexamination. Section 1.78(c) is also amended to correct ''inventors and owned by the same party contain conflicting claims'' to read ''inventors are owned by the same party and contain conflicting claims.'' Section 1.78(c) is also amended to delete the sentence ''[i]n addition to making said statement, the assignee may also explain why an interference should or should not be declared.''

Section 1.78(d) is removed. The provisions of former § 1.78(d), as proposed, are in new § 1.130(b).

Section 1.84(c) is amended to provide that a reference to the application number, or, if an application number has not been assigned, the inventor's name, may be included in the left-hand corner of the drawing sheet, provided that reference appears within 1.5 cm. (9⁄16 inch) from the top of the sheet.

Section 1.84(f) is amended to provide that the size of all drawing sheets in an application must be either 21.0 cm. by 29.7 cm. (DIN size A4) or 21.6 cm. by 27.9 cm. (8½ by 11 inches) to conform to the requirement in § 1.52(b) concerning papers in an application.

Section 1.84(g) is amended to delete the margin requirements for the sheet sizes that are no longer acceptable in view of the changes to § 1.84(f). Section 1.84(g) is further amended to provide that the sheets should have scan targets (cross-hairs) on two catercorner margin corners. Finally, § 1.84(g) is amended to increase the bottom and side margins such that each sheet must include a top margin of at least 2.5 cm. (1 inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 1.5 cm. (9⁄16 inch), and a bottom margin of at least 1.0 cm. (3⁄8 inch), thereby leaving a sight no greater than 17.0 cm. by 26.2 cm. on 21.0 cm. by 29.7 cm. (DIN size A4) drawing sheets, and a sight no greater than 17.6 cm. by 24.4 cm. (6 15⁄16 by 9⅝ inches) on 21.6 cm. by 27.9 cm. (8½ by 11 inch) drawing sheets.

Section 1.84(x) is amended to delete the provisions indicating the proper location for holes in a drawing sheet, and provide that no holes should be provided in the drawing sheets.

Section 1.96 is amended to designate the text preceding current paragraph (a) as paragraph (a) ''*General,*'' and would redesignate current paragraphs (a) and (b) as paragraphs (b) and (c), respectively. New § 1.96(a) is further amended to insert a period between ''specification'' and ''[a] computer,'' to change ''these rules'' to ''this section,'' and to change ''may be submitted in patent applications in the following forms'' to ''may be submitted in patent applications as set forth in paragraphs (b) and (c) of this section.''

New § 1.96(b) is further amended to: (1) Change the sentences ''[t]he listing may be submitted as part of the specification in the form of computer printout sheets (commonly 14 by 11 inches in size) for use as 'camera ready copy' when a patent is subsequently printed'' and ''[s]uch computer printout sheets must be original copies from the computer with dark solid black letters not less than 0.21 cm. high, on white, unshaded and unlined paper, the printing on each sheet must be limited to an area 9 inches high by 13 inches wide, and the sheets should be submitted in a protective cover'' to ''[a]ny listing submitted as part of the specification must be direct printouts (*i.e.,* not copies) from the computer's printer with dark solid black letters not less than 0.21 cm. high, on white, unshaded and unlined paper, and the sheets should be submitted in a protective cover''; (2) delete the sentence ''[w]hen printed in patents, such computer printout sheets will appear at the end of the description but before the claims and will usually be reduced about 1/2 in size with two printout sheets being printed as one patent specification page''; and (3) delete the phrase ''if the copy is to be used for camera ready copy.'' New § 1.96(b)(1) provides that the requirements of § 1.84 apply to computer program listings submitted as sheets of drawings, and new § 1.96(b)(2) provides that the requirements of § 1.52 apply to computer program listings submitted as part of the specification.

New § 1.96(c) is amended to: (1) Change the references to § 1.77(c)(2) in § 1.96(c) to § 1.77(a)(6) for consistency with § 1.77; (2) change ''may'' and ''should'' to ''must''; (3) delete the sentence ''[a]ll computer program listings submitted on paper will be printed as part of the patent''; (4) relocate the phrase ''except as modified or clarified below'' in subsection (c)(2); (5) change the phrase ''computer-generated information submitted as an appendix to an application for patent shall be in the form of microfiche in accordance with the standards'' to ''computer-generated information submitted as a 'microfiche appendix' to an application shall be in accordance with the standards'' for clarity; (6) change the references to the specific American National Standards Institute (ANSI) or National Micrographics Association (NMA) standards with 36 CFR Part 1230; (7) change ''serial number'' to ''application number''; and (8) provide metric dimensions with English equivalents in parentheticals, rather than *vice versa.*

Section 1.97(a) is amended to include the phrase ''for an applicant for patent or for reissue of a patent.'' Paragraphs (a)–(d) are amended to include the phrase ''by the applicant'' to clarify that § 1.97 is not available for any third party seeking to have information considered in a pending application. Any third party seeking to have information considered in a pending application must proceed under §§ 1.291 or 1.292. As discussed *supra,* §§ 1.97 (a), (c) and (d) are also being amended for clarity. Section 1.97(c) is further amended to correct the phrase ''certification as specified in paragraph (3) of this section'' to read ''certification as specified in paragraph (e) of this section.''

Section 1.107 is amended to delete the phrase ''and the classes of inventions.''

Section 1.110 is amended to change the reference to § 1.78(d) to a reference to § 1.130 for consistency with the removal of § 1.78(d), and the location of the provisions of former § 1.78(d) in § 1.130(b).

A new paragraph (a)(3) in § 1.131 was proposed in the Notice of Proposed Rulemaking to permit a showing of prior invention in a pending application or patent under reexamination to avoid a rejection under 35 U.S.C. 103 based upon a patent which qualifies as prior art only under 35 U.S.C. 102 (a) or (e), where the application or patent under reexamination and the patent upon which the rejection is based are both owned by a single party, so long as the invention claimed in the pending application or patent under reexamination and in the other patent are not identical as set forth in 35 U.S.C. 102. Upon further study, it is considered

appropriate to disqualify such patents, and provide for the obviation of judicially created double patenting rejections in an application or a patent under reexamination by the filing of a terminal disclaimer in accordance with § 1.321(c), in a separate § 1.130.

New § 1.130(a) provides that when any claim of an application or a patent under reexamination is rejected under 35 U.S.C. 103 on a U.S. patent to another or others which is not prior art under 35 U.S.C. 102(b), and the inventions defined by the claims in the application or patent under reexamination and by the claims in the patent are patentably indistinct but not identical as set forth in 35 U.S.C. 101, and the inventions are owned by the same party, the applicant or owner of the patent under reexamination may disqualify the patent as prior art. Section 1.130(a) specifically provides that the patent can be disqualified as prior art by submission of: (1) A terminal disclaimer in accordance with § 1.321(c), and (2) an oath or declaration stating that the application or patent under reexamination and the patent are currently owned by the same party, and that the inventor named in the application or patent under reexamination is the prior inventor under 35 U.S.C. 104.

Where inventions defined by the rejected claims in the application or a patent under reexamination and by the claims in the patent upon which the rejection is based are patentably distinct, the rejection may be overcome pursuant to § 1.131. Since § 1.130 applies only when inventions defined by the claims in an application or a patent under reexamination and by the claims in the patent are patentably indistinct, § 1.130 expressly provides that an oath or declaration submitted pursuant to § 1.130 to disqualify a patent must be accompanied by a terminal disclaimer in accordance with § 1.321(c).

As the conflict between two pending applications can be avoided by filing a continuation-in-part application merging the conflicting inventions into a single application, § 1.130 is limited to rejections based upon a patent.

New § 1.130(b) includes the provisions of former § 1.78(d), as proposed in the Notice of Proposed Rulemaking. Former § 1.78(d) was proposed to be amended to change ''obviousness-type double patenting rejection'' to ''non-statutory double patenting rejections'' as current examining procedures authorize non-obviousness-type double patenting rejections, as well as obviousness-type double patenting rejections (See section 804(II) of the Manual of Patent Examining Procedure (MPEP)), and either may be obviated by filing a terminal disclaimer in accordance with § 1.321(c). The phrase ''non-statutory double patenting rejection,'' however, is being replaced with ''judicially created double patenting rejection'' to better set forth the legal basis for the rejection.

Section 1.78(d) was also proposed to be amended to change each instance of ''application'' to ''application or a patent under reexamination'' for consistency with § 1.321 and to clarify that double patenting is a proper consideration in reexamination (*Ex parte Obiaya,* 227 USPQ 58, 60–61 (Bd. Pat. App. & Inter. 1985)), and that a judicially created double patenting rejection in a patent under reexamination may be obviated by filing a terminal disclaimer in accordance with § 1.321(c).

New § 1.130(b) specifically provides that where an application or a patent under reexamination claims an invention which is not patentably distinct from an invention claimed in a commonly owned patent with the same or a different inventive entity, a double patenting rejection will be made in the application or a patent under reexamination, and that a judicially created double patenting rejection may be obviated by filing a terminal disclaimer in accordance with § 1.321(c).

Section 1.131 is amended to change ''U.S. patent to another'' to ''U.S. patent to another or others'' to parallel the language in 35 U.S.C. 102(a), as well as 35 U.S.C. 102(e).

Section 1.132 is amended to change ''domestic patent'' to ''U.S. patent,'' and ''does not claim the invention'' to ''does not claim the same patentable invention, as defined in § 1.601(n)'' for consistency with § 1.131.

Section 1.154 is amended to provide that the elements of a design application, if applicable, should appear in the following order: (1) Design Application Transmittal Form; (2) Fee Transmittal Form; (3) preamble, stating name of the applicant and title of the design; (4) cross-reference to related applications; (5) statement regarding federally sponsored research or development; (6) description of the figure or figures of the drawing; (7) feature description; (8) a single claim; (9) drawings or photographs; and (10) executed oath or declaration. The phrase ''[t]he following order of arrangement should be observed in framing design specifications'' is changed to ''[t]he elements of the design application, if applicable, should appear in the following order'' to clarify that § 1.154 does not *per se* require that an application include all of the listed elements, but merely provides that any listed element included in the application should appear in the order set forth in § 1.154. This amendment to § 1.154, however, does not modify the current requirement that an application for a design patent have but a single claim.

A new § 1.163(c) is added to provide that the elements of a plant application, if applicable, should appear in the following order: (1) Plant Application Transmittal Form; (2) Fee Transmittal Form; (3) title of the invention; (4) cross-reference to related applications; (5) statement regarding federally sponsored research or development; (6) background of the invention; (7) brief summary of the invention; (8) brief description of the drawing; (9) detailed botanical description; (10) a single claim; (11) abstract of the disclosure; (12) drawings (in duplicate); (13) executed oath or declaration; and (14) Plant Color Coding Sheet. The phrase ''if applicable'' is included in the heading, rather than associated with any particular listed element, to clarify that § 1.163 does not *per se* require that an application include all of the listed elements, but merely provides that any listed element included in the application should appear in the order set forth in § 1.163. This amendment to § 1.163, however, does not modify the current requirement that an application for a plant patent have but a single claim.

A new § 1.163(d) is added to define a plant color coding sheet. A plant color coding sheet is a sheet that specifies a color coding system as designated in a color dictionary, and lists every plant structure to which color is a distinguishing feature and the corresponding color code which best represents that plant structure. The plant color coding sheet will provide a means for applicants to uniformly convey detailed color characteristics of the plant. Providing this information in a systematic manner will facilitate the examination of the application.

Section 1.291 is amended to provide that a protest must be filed prior to the mailing of a Notice of Allowance to be considered timely. As a protest cannot be considered subsequent to issuance of the application as a patent, § 1.291(b) is amended to provide that the protest will be considered if the application is still pending when the protest and application file are provided to the examiner (*i.e.,* that the application was pending at the time the protest was filed would be immaterial to its ultimate consideration). Finally, the sentences

''[p]rotests raising fraud or other inequitable conduct issues will be entered in the application file, generally without comment on those issues'' and ''[p]rotests which do not adequately identify a pending patent application will be disposed of and will not be considered by the Office'' in § 1.291 are changed to ''[p]rotests raising fraud or other inequitable conduct issues will be entered in the application file, generally without comment on those issues'' and ''[p]rotests which do not adequately identify a pending patent application will be returned to the protestor and will not be further considered by the Office,'' respectively, and are located in paragraph (b). The Office will acknowledge protests prior to their entry into the application file or return to the protestor, as appropriate.

Section 1.292 is amended to delete the phrase ''is filed by one having information of the pendency of an application'' as unnecessary, and would move the requirement for the fee set forth in § 1.17(j) from paragraph (a) to paragraph (b) where the conditions for entry of a petition for the institution of public use proceedings are set forth. Section 1.292 is amended to further require that any petition be served on the applicant in accordance with § 1.248, or be filed with the Office in duplicate in the event that service on the applicant is not possible. Finally, § 1.292 is amended to provide that a petition to institute public use proceedings to be considered timely must be filed prior to the mailing of a Notice of Allowance.

Section 1.315 is amended to change ''the attorney or agent of record, if there be one; or if the attorney or agent so request, to the patentee or assignee of an interest therein; or, if there be no attorney or agent, to the patentee or to the assignee of the entire interest, if he so request'' to ''the correspondence address of record. See § 1.33(a).'' This change is to simplify § 1.315, and because patents are currently mailed to the patentee at the correspondence address of record.

Section 1.321(c) is amended to change ''double patenting rejection'' to ''judicially created double patenting rejection'' for consistency with § 1.78(c) and to clarify that the filing of a terminal disclaimer is ineffective to overcome a statutory double patenting rejection.

Section 1.497(a) is amended to provide that an applicant in an international application must file an oath or declaration that: (1) Is executed in accordance with either §§ 1.66 or 1.68, (2) identifies the specification to which it is directed, (3) identifies each inventor and the country of citizenship of each inventor, and (4) states that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought, rather than an oath or declaration in accordance with § 1.63, to enter the national stage pursuant to §§ 1.494 or 1.495. Currently, the failure to file an oath or declaration in strict compliance with § 1.63 results in non-compliance with § 1.497, and thus 35 U.S.C. 371, which in turn delays the entry of the international application into the national stage. To expedite the entry of international applications into the national stage, § 1.497(a) is amended to require only an oath or declaration that is properly executed, identifies the specification to which it is directed, and, as required by 35 U.S.C. 115, identifies each inventor and the country of citizenship of each inventor and states that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

Section 1.497(b) is subdivided into paragraphs (b)(1) and (b)(2). Section 1.497(b)(1) is amended to provide that the oath or declaration must be made by all of the actual inventors except as provided for in §§ 1.42, 1.43 or 1.47. Section 1.497(b)(2) is amended to change ''[i]f the international application was made as provided in §§ 1.422, 1.423 or 1.425, the applicant shall state his or her relationship to the inventor and, upon information and belief, the facts which the inventor is required by § 1.63 to state'' to ''[i]f the person making the oath or declaration is not the inventor, the oath or declaration shall state the relationship of the person to the inventor, the facts required by §§ 1.42, 1.43 or 1.47, and, upon information and belief, the facts which the inventor would have been required to state.''

Section 1.497(c) is added to provide that the oath or declaration must comply with the requirements of § 1.63. Section 1.497(c) further provides that in instances where the oath or declaration does not comply with § 1.63, but meets the requirements of § 1.497 (a) and (b), the oath or declaration will be accepted as complying with 35 U.S.C. 371(c)(4) and §§ 1.494(c) or 1.495(c), thus permitting the application to enter the national stage and the assignment of dates under 35 U.S.C. 102(e) and 371(c). A supplemental oath or declaration in compliance with § 1.63, however, will be required in accordance with § 1.67.

Response to Comments

Two hundred and forty-two written comments were received in response to the Notice of Proposed Rulemaking. A public hearing was held on September 19, 1995. Eight persons testified at the public hearing.

The written comments, and the testimony at the public hearing, have been analyzed. In the event that H.R. 1733 is enacted, the comments directed to the proposed changes to the rules of practice to implement the 18-month publication of patent applications will be considered and addressed in the final rule package to implement 18-month publication. Responses to the comments germane to the changes in this final rule package follow.

Comment (1): One comment suggested that, in the absence of an 18-month publication system, the proposed rules relating to application format and standardization of applications be republished to give the public an opportunity to comment on the desirability of these changes in the absence of an 18-month publication system.

Response: The Notice of Proposed Rulemaking specifically stated that the proposed rules relating to application format and standardization of applications may be adopted as final rules even in the absence of an 18-month publication system, and specifically advised interested members of the public to comment on the advisability of the proposed rules relating to application format and standardization of applications, regardless of the legislative action on H.R. 1733. Thus, the public was given an opportunity to comment on the desirability of these changes in the absence of an 18-month publication system. Because the standardization of applications is generally favored and will substantially improve the Office's ability to efficiently and effectively process applications, delaying their adoption as final rules is not justified.

Comment (2): One comment stated that the Office has the authority to require that applications be submitted in computer-readable form, and in fact requires sequence listings to be submitted in such form. The comment suggested that the cost of electronically scanning application papers, as well as errors in scanning the application papers, can be avoided by requiring applicants to provide the specification in computer-readable form. Another comment stated that the Office has the authority to permit electronic filing, and electronic filing should be permitted. Several other comments indicated that

scanning an application into a data base, rather than permitting applicants to provide a copy of the application on an electronic medium, is more costly, and is further more likely to introduce errors that could render text searching unreliable. And, several comments suggested that the scanning and typesetting costs associated with the current publication process for issued patents could be reduced by the acceptance of electronic media in place of or in addition to the paper medium currently provided for in the rules of practice. These comments further suggested that the Office should establish fees that reflect the reduced cost to the Office when a copy of an application is provided on an electronic medium (*i.e.*, should establish reduced fees for those who submit a copy of their application on an electronic medium), which fee structure would provide an incentive to supply a copy of an application on an electronic medium.

Response: As discussed in the Notice of Proposed Rulemaking, while the Office is considering the legislative and regulatory changes that would be necessary to permit purely electronic filing of application papers, it does not currently have in place an automated system for the acceptance and processing of application papers in electronic form, other than for sequence listings. Moreover, the Office does not currently have the statutory authority to rebate statutory patent filing fees to reflect any reduced cost to the Office due to the submission of a copy of an application on an electronic medium. The Office will give the comments further consideration as it designs and develops the Patent Application Management (PAM) system.

Comment (3): Several comments noted that §§ 1.52 (a) and (b) impose a standard on applicants not currently observed by the Office, and questioned whether papers in the application file prepared by the Office will comply with §§ 1.52 (a) and (b).

Response: Sections 1.52 (a) and (b) apply to the application papers, and amendments or corrections thereto. As such, §§ 1.52 (a) and (b) do not apply to those papers in the application file prepared by the Office, since they do not become part of the printed patent.

Comment (4): One comment noted that proposed § 1.52 appears to be neutral with regard to numbering the lines (*e.g.*, a line number every five lines) of the specification, and suggested that line numbering is a beneficial practice which should be permitted, and even encouraged.

Response: Section 1.52 neither requires nor prohibits line numbering. Applicants are encouraged, but not required, to number the lines of the specification. The Office will give the suggestion further study and consideration in future rulemaking.

Comment (5): One comment noted that when paragraphs are separated by a blank line only (*i.e.*, no indentation) and end between pages, it is not possible to tell that a paragraph break occurred. The comment suggested that the application format requirements should additionally require an indentation at the beginning of each new paragraph.

Response: It is desirable that a specification include an indentation at the beginning of a new paragraph. This requirement, however, was not proposed for comment in the Notice of Proposed Rulemaking. In addition, PCT Rule 11 does not require that the beginning of each new paragraph in the specification be indented.

Comment (6): One comment noted that § 1.52(a) would prohibit handwriting or hand-printing on papers which are to become permanent Office records. The comment questioned whether this requirement would also apply to papers issued in the Office. The comment suggested revising Office practice to prohibit an examiner from handwriting comments on official papers (*e.g.*, advisory actions or interview summary records) because: (1) The handwriting is not always decipherable, and (2) the handwriting as it comes through on the carbon copies furnished to applicants is frequently too light at least in part to be decipherable.

Response: The Office's goal is to create a readable administrative record of the prosecution of every application. The Office is currently designing, testing and implementing electronic forms and Office action writing software to avoid or minimize the need for handwriting/printing in Office communications. Any applicant receiving an Office communication in which the handwriting is not decipherable, or does not adequately appear on the carbon copies to be decipherable, should request a legible copy of such communication from the Office.

Comment (7): Several comments noted that the limitations in § 1.52 (a) and (b) regarding ''typed'' and ''ink'' appear to exclude computer and laser printers, as well as commercially or mechanically printed papers such as declaration forms. Another comment noted that the limitations in §§ 1.52 (a) and (b) regarding ''typed'' and ''ink'' are more restrictive than PCT Rule 11.9 (a) and (d).

Response: The phrase ''printed'' was proposed to be deleted since it could be read to mean that hand-printing is acceptable. Section 1.52(a) will require, in part, that ''[a]ll papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written either by a typewriter or mechanical printer in permanent dark ink or its equivalent in portrait orientation on flexible, strong, smooth, non-shiny, durable, and white paper.'' This will clarify that papers printed by a computer-operated laser, or any mechanical printer are acceptable, but that hand-printed papers are not. This change will also avoid inconsistencies with the requirements of PCT Rule 11.9.

Comment (8): One comment noted that the proposed changes to § 1.52(a) did not include any limitations regarding permissible type fonts. The comment questioned, since the purpose of the proposed rule change was to permit optical character recognition (OCR) scanning of the application papers, whether script fonts would be permissible.

Response: Section 1.52(a) does not include any express prohibition against the use of script fonts. Nevertheless, § 1.52(a) requires that ''the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit * * * electronic reproduction by use of digital imaging and optical character recognition.'' Any application papers, including application papers containing a script font, that are not in a form having sufficient clarity and contrast between the paper and the writing thereon to permit electronic reproduction by use of digital imaging and optical character recognition will be objected to as not in compliance with § 1.52(a). Therefore, the Office cautions applicants not to submit application papers having script fonts.

Comment (9): One comment noted that § 1.52(b) would require that all papers (including drawings per proposed § 1.84) be limited to either DIN size A4 or 8½ by 11 inches, which would eliminate the currently allowed paper sizes of 8½ by 13 or 14 inches. The comment questioned whether this would also apply to the official papers issued by the Office, noting that the Office currently issues papers having a paper size mix of 8½ by 11, 13, and 14 inches, which presents problems for applicants. The comment suggested that the Office should not issue papers of a size not permitted in § 1.52.

Response: The Office is currently in the process of standardizing to either

21.0 cm. by 29.7 cm. (DIN size A4) or 21.6 cm. by 27.9 cm. (8½ by 11 inches).

Comment (10): One comment suggested that the Office should not issue papers with writing on the back side in accordance with § 1.52(b).

Response: The Office currently includes informational language on the back side of certain forms. The alternatives to issuing such forms with writing on the back side are: (1) Not providing this information to applicants, (2) reducing the print size to permit all of the information to be located on the front of the form, or (3) routinely providing multiple page forms. Since none of the alternatives are preferable to simply including informational language on the back side of certain forms, the Office will continue to include information language on the back of papers issued by the Office, until it fully transforms all of its forms to electronically generated forms.

Comment (11): One comment questioned whether the phrase ''claims on a separate sheet'' in § 1.52(b) means that: (1) All of the claims must appear on a single separate sheet, (2) each claim must appear on a separate sheet, or (3) the claims (claim 1) must begin or commence on a separate sheet. The comment suggested the PCT wording that the claims shall commence on a separate sheet if the rule is intended to require that the claims (claim 1) must begin or commence on a separate sheet.

Response: The phrase has been changed to ''the claim or claims commencing on a separate sheet'' to clarify that the claims must begin or commence on a separate sheet to parallel PCT requirements. Thus, §§ 1.52(b) and 1.75(h) require that the claims (claim 1) must begin or commence on a separate sheet. Sections 1.52(b) and 1.75(h) do not require that all of the claims be set forth on a single sheet, or that each claim be set forth on a separate sheet.

Comment (12): One comment questioned whether the phrase ''abstract and claims on a separate sheet'' in § 1.52(b) means that the abstract is to be on one separate sheet, and the claims are to be (or commence) on another separate sheet.

Response: The phrase has been changed to ''the claim or claims commencing on a separate sheet and abstract commencing on a separate sheet'' to clarify that the claims must commence on one separate sheet and the abstract must commence on another separate sheet.

Comment (13): One comment noted that the requirement in § 1.52(b), as proposed, will require that the lines in the oath or declaration, as well as quotations from the rules, the MPEP, and court decisions in subsequently filed amendments, be 1½ or double spaced, and is inconsistent with the forms included for comment with the Notice of Proposed Rulemaking.

Response: Section 1.52(b) has been changed to require, *inter alia*, that ''[t]he lines of the specification, and any amendments to the specification, must be 1½ or double spaced.'' The requirement for 1½ or double spacing will not apply to oaths or declarations, pre-printed forms, or all of the statements in the ''Remarks'' section of an amendment. Applicants are nevertheless requested to submit papers with lines 1½ or double spaced, except in standardized forms or where single-spacing may be stylistically necessary (*e.g.*, block quotations).

Comment (14): One comment questioned whether the requirement in § 1.52(b), as proposed, that papers have lines 1½ or double spaced will apply to Office actions. The comment suggested that not placing block quotations from the statutes and regulations in single spacing will decrease the readability of Office actions.

Response: As discussed *supra*, §§ 1.52 (a) and (b) are designed to facilitate patent printing and do not apply to Office actions. Section 1.52(b) has been changed to require, *inter alia*, that ''[t]he lines of the specification, and any amendments to the specification, must be 1½ or double spaced.'' Therefore, the requirement for 1½ or double spaced lines will not apply to Office actions.

Comment (15): Several comments objected to the requirement that tables be in portrait orientation as inconsistent with PCT rules, and as causing tables to be split over multiple pages.

Response: The suggestions are adopted. Section 1.58 will state that ''[c]hemical and mathematical formulae and tables must be presented in compliance with §§ 1.52 (a) and (b), except that chemical and mathematical formulae or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation,'' rather than ''[t]o facilitate camera copying when printing, the width of formulae and tables as presented should be limited normally to 12.7 cm. (5 inches) so that it may appear as a single column in the printed patent.''

Comment (16): One comment stated that § 1.72 is contrary to PCT Rule 11.4(a), and will require renumbering of the application pages for later filing of that application in the European Patent Office (EPO) or under the PCT.

Response: Section 1.72, as proposed in the Notice of Proposed Rulemaking, provided that the abstract be ''preferably prior to the first page of the specification,'' and, as such, merely expressed the Office's preference for the location of the abstract as prior to the first page of the specification. Nevertheless, to avoid the undesirable result of requiring an applicant who submitted an application in the format set forth in § 1.77 to renumber the specification pages for filing that application in the EPO or under the PCT, § 1.72 is changed to state that the preferable location of the abstract is following the claims.

Comment (17): One comment stated that requiring that the rarely used section headings (*e.g.*, statement regarding federally sponsored research and development) be followed by the phrase ''not-applicable'' is confusing.

Response: Section 1.77 is permissive rather than mandatory. As such, any applicant finding the format suggested therein to be confusing is at liberty to simply include those section headings applicable to the particular application. The use of each section heading, even when the section is ''not-applicable,'' is desirable in that it apprises the Office that the section at issue has been considered and deemed inapplicable. Simply not providing a section heading is ambiguous as to whether the applicant considers the section inapplicable or has not considered whether the section is applicable to the application. In addition, the use of such section headings will be of greater benefit when the Office implements procedures to permit the electronic filing of patent applications.

Comment (18): One comment stated that the requirements set forth in § 1.77 are in addition to those required by the PCT. The comment argued that the Office cannot require international applications entering the national stage under 35 U.S.C. 371 to comply with these requirements.

Response: As discussed *supra*, § 1.77 merely expresses the Office's preference for the arrangement of the application elements. The Office may advise an applicant that the application does not comply with the format set forth in § 1.77, and suggest this format for the applicant's consideration; however, the Office will not require any application to comply with the format set forth in § 1.77. Therefore, there is no conflict between § 1.77 and the PCT.

Comment (19): One comment noted that §§ 1.154 and 1.163 apply to design and plant applications, and, as such, they are not in conflict with PCT Rules. The comment suggested that it would,

however, be preferable that all types of U.S. applications maintain the same order of application elements, and that this order be the order set forth by the PCT Rules.

Response: As discussed *supra,* the arrangement of the elements of an application set forth in § 1.77 is not mandatory, and, as such, § 1.77 is not in conflict with the PCT or PCT Rules. Section 1.77 merely expresses the Office's preference for the arrangement of the elements of an application. The Office's preference for the format of design applications (§ 1.154) and plant applications (§ 1.163) is the same as the Office's preference for utility applications (§ 1.77).

Comment (20): One comment stated that in the absence of statutory requirements for the application elements proposed in §§ 1.77, 1.154, and 1.163, the rule should clearly state that these application elements or arrangements are preferred but not mandatory.

Response: Sections 1.77, 1.154, and 1.163 employ the phrase ''should'' rather than ''must,'' which is the language of a precatory statement. Therefore, §§ 1.77, 1.154, and 1.163 currently state that these application elements or arrangements are preferred, but are not mandatory.

Comment (21): One comment questioned whether the Application Transmittal Form, and Fee Transmittal Form set forth in § 1.77 should be numbered pages 1 and 2 pursuant to § 1.52, and further questioned where the drawings and oath or declaration are to be numbered.

Response: Section 1.52 has been changed to provide that the pages of the specification, not the application, should be consecutively numbered beginning with page 1. The Application Transmittal Form, and Fee Transmittal Form set forth in § 1.77 are not part of the specification. As such, they should not be numbered as pages 1 and 2, respectively. Likewise, the drawings and oath or declaration are not part of the specification, and need not be numbered.

Comment (22): One comment stated that the failure to include the phrase ''not applicable'' by all of the application elements not required by statute or regulation rendered it unclear as to whether the Office would object to the lack of an application element for which the phrase ''not applicable'' is not included.

Response: The Office anticipates that an applicant choosing to use the Transmittal forms provided by the Office will arrange his or her application in the format suggested by the Office. The patent statutes and regulations set forth the requirements for a complete application, as well as the requirements for obtaining a filing date in an application. Applications are examined for compliance with the patent statutes and regulations, not for consistency with any particular transmittal form.

Comment (23): One comment noted, in regard to § 1.84(c), that the drawings of an international application, which are often used for processing in the Office, will have the World Organization (WO) publication number and International Bureau (IB) publication date on the top of the drawing.

Response: The WO publication number and IB publication date placed on the top of the drawing of an international application is not objectionable under § 1.84(c).

Comment (24): One comment stated that the scan target points conflict with PCT Rule 11.6(e). As such, the scan target points would have to be removed from applications to be filed as an international application. The comment further stated that these target points are unnecessary in view of the paper size and margin requirements.

Response: Section 1.84(g) states that drawings ''should,'' and not ''must,'' have scan target points printed on two catercorner margin corners. Thus, § 1.84(g) merely expresses the Office's preference for scan target points on the drawings for filming and printing purposes, which are considered desirable due to the different sights on 21.0 cm. by 29.7 cm. (DIN size A4) and 21.6 cm. by 27.9 cm. (8½ by 11 inch) drawing sheets. An applicant wishing to provide scan target points on drawings that will later be filed in the EPO may simply copy the drawings to be filed in the EPO, place the scan target points only on the Office copy of the drawings, and submit the copy of the drawings containing the scan target points to the Office. Likewise, applicants filing drawings that were previously filed in the EPO should simply add scan target points only to the copy of the drawings to be filed in the Office. Nevertheless, as § 1.84(g) merely expresses a preference for scan target points for Office filming and printing purposes, an applicant intending to later file the application in the EPO, or any applicant, is at liberty to not include such scan target points on the drawings. The Office will not object to the absence of scan target points on any drawings filed in the Office. Therefore, § 1.84(g) does not include a requirement in excess of, or inconsistent, with PCT Rules.

Comment (25): One comment stated that the term ''catercorner'' is slang, and suggested that it be replaced in § 1.84(g) with a phrase such as ''diagonally opposite.''

Response: The term ''catercorner'' is not slang. While there are a number of acceptable English phrases to denote diagonally opposite, the term ''catercorner'' was selected to avoid using a multiple word phrase where a single word will suffice.

Comment (26): One comment stated that the language proposed to be added to § 1.97 regarding a reexamination or patent owner is inconsistent with § 1.533 and suggested that it be deleted.

Response: The suggestion is adopted.

Comment (27): One comment stated that § 1.131 does not specify whether the phrase ''application'' includes provisional applications. The comment suggested that § 1.131 be amended to state ''unless the date of such patent or publication is more than one year prior to the earliest date on which the inventor's or patent owner's application or provisional application from which that application claims priority therefrom was filed in this country.''

Response: The proposed change to § 1.131 is not adopted. It is well established that the filing date of any abandoned application co-pending with and referred to in a patent is the effective date of the patent with respect to the common subject matter disclosed in the patent and abandoned application. See *In re Switzer,* 166 F.2d 827, 77 USPQ 156 (CCPA 1948). Section 1.131 does not make a specific reference to nonprovisional applications for which a benefit is claimed under 35 U.S.C. 120; however, it is understood that the effective date of any patent sought to be antedated pursuant to § 1.131 is the earliest filing date of any application to which the patent is entitled to under 35 U.S.C. 120 with respect to the common subject matter disclosed in the patent and the application. The provisions of title 35, except for 35 U.S.C. 115, 131, 135 and 157, apply to provisional applications. 35 U.S.C. 111(b)(8). It is therefore likewise unnecessary to specifically reference provisional applications in § 1.131.

Comment (28): Several comments objected to §§ 1.291 and 1.292 as pre-grant opposition, especially in view of the pre-grant publication of pending applications that would be provided for in H.R. 1733, if enacted, and the expanded reexamination that would be provided for in H.R. 1732, if enacted. The comments either suggested that the protest and public use proceeding

provisions of §§ 1.291 and 1.292 be severely limited or abolished.

Response: The changes to §§ 1.291 and 1.292 place greater obligations on third parties seeking to use these sections. As such, this rule change does not add to any third party's ability to participate in the prosecution of a pending application. Nevertheless, as neither H.R. 1732 nor H.R. 1733 has presently been enacted, analysis of whether modification of §§ 1.291 and 1.292 in addition to that proposed in the Notice of Proposed Rulemaking is desirable in a pre-grant publication or expanded reexamination system is held in abeyance pending enactment of H.R. 1733 or 1732.

Comment (29): One comment noted that any standardization of patent applications should not include pre-printed forms taking eleven hours to complete. The comment further suggested that word-processor versions of any collection of information, rather than pre-printed forms, would be of greater assistance to members of the public.

Response: Initially, the Notice of Proposed Rulemaking indicated that the initial patent application (*e.g.*, the specification, drawings, as well as the standard forms), not merely the proposed standardized forms, is a collection of information estimated to average eleven hours to complete. The Notice of Proposed Rulemaking stated that the public reporting burden for these collections of information is estimated to average: (1) Twelve minutes per response for the Fee Transmittal form, (2) twelve minutes per response for the Utility Patent Application Transmittal form, (3) twelve minutes per response for the Design Patent Application Transmittal form, (4) twelve minutes per response for the Plant Patent Application Transmittal form, (5) twelve minutes per response for the Plant Color Coding Sheet, (6) twenty-four minutes per response for the Declaration form, and (7) twenty-four minutes per response for the Plant Patent Application Declaration. Nevertheless, the final rules do not require the use of any standardized form. The Office publishes standardized forms only as an aid to practitioners and applicants.

Comment (30): One comment questioned whether use of the standardized versions of the various forms would be required. Another comment stated that the Office has no authority to require the use of the published forms in the absence of statutory authority.t

Response: Use of the forms included for comment with the Notice of Proposed Rulemaking is not mandatory. That is, an applicant need not use the standardized versions of the Fee Transmittal form, Utility Patent Application Transmittal form, Design Patent Application Transmittal form, Plant Patent Application Transmittal form, Plant Color Coding Sheet, Declaration form and Plant Patent Application Declaration form, and need not use any fee transmittal form, application transmittal form, or plant color coding sheet. These forms were created to assist applicants in filing a patent application and to help ensure the filing of a complete application accompanied by the appropriate fees, thereby avoiding unnecessary delays in the examination of the application.

Comment (31): One comment stated that the Office should not require the use of mandated forms, and if the Office requires the use of mandated forms, the Office should revise the forms to render them readily reproducible by conventional software, and should arrange for versions of these forms in various formats to be distributed by the Internet, bulletin board, or floppy disk. Another comment suggested that the Office should make its form or templates available for electronic copying.

Response: Copies of the standard forms provided by the Office may be obtained by contacting the Customer Service Center of the Office of Initial Patent Examination at (703) 308–1214. Also, many standardized forms have been loaded on the Office's Internet Website and may be electronically copied via the Internet through anonymous file transfer protocol (ftp) (address: ftp.uspto.gov). Nevertheless, use of the forms included for comment with the Notice of Proposed Rulemaking is not mandatory.

Comment (32): One comment questioned why there is a box with an instruction to type a plus sign in the box at the very top of the standardized forms.

Response: As discussed *supra*, the Office plans to replace or augment the current microfilming process with an electronic data base which captures at least the technical content of the application-as-filed for internal Office use. Typing a plus sign (+) into this box will facilitate the image scanner in aligning the remaining typing on the form during the scanning process.

Comment (33): One comment questioned: (1) Why the application transmittal forms do not have a place for applicant to indicate the type of new utility application being transmitted (*e.g.*, a provisional, original, continuation, division, continuation-in-part, reissue), and (2) how the Office official will obtain this information for entry in the official use ''application type'' box.

Response: The Utility Patent Application Transmittal form sets forth instructions for filing utility applications under § 1.53 in the arrangement set forth in § 1.77. All non-reissue, nonprovisional utility applications (*i.e.*, original, continuation, divisional, and continuation-in-part applications) filed under § 1.53 should be submitted using the Utility Patent Application Transmittal form. The Design Patent Application Transmittal form sets forth instructions for filing design applications in the arrangement set forth in § 1.154. All non-reissue design applications should be submitted using the Design Patent Application Transmittal form. The Plant Patent Application Transmittal form sets forth instructions for filing plant applications in the arrangement set forth in § 1.163. All non-reissue, nonprovisional plant applications should be submitted using the Plant Patent Application Transmittal form.

A Reissue Patent Application Transmittal form is also available, and all applications for the reissue of a patent should be submitted using the Reissue Patent Application Transmittal form. The cover sheet provided for in § 1.53(b)(2)(i) for a provisional application functions as a transmittal sheet for a provisional application. As such, the standardized Provisional Application Cover Sheet is the transmittal form for a provisional application. The provisional application cover sheet was published in the rulemaking entitled ''Changes to Implement 20-Year Patent Term and Provisional Applications,'' in the Federal Register at 60 FR 20230–31 (April 25, 1995), and in the Patent and Trademark Office Official Gazette at 1174 Off. Gaz. Pat Office 45–46 (May 2, 1995).

To provide a place on the Application Transmittal form for claims under 35 U.S.C. 119, 120, or 121 would require the use of an unacceptably smaller font on the Application Transmittal form. The Declaration forms provide a place for stating claims under 35 U.S.C. 119, 120 or 121. The inclusion on filing of an executed or unexecuted Declaration form containing this information would assist the Office in ascertaining whether the application is an original, continuation, divisional, or continuation-in-part application. In addition, in the event that H.R. 1733 is enacted, and the proposed changes to §§ 1.55(a) and 1.78(a)(2) are adopted substantially as proposed, the routine

inclusion of claims for priority under 35 U.S.C. 119, 120, or 121 in an executed or unexecuted declaration form accompanying the application papers would be an excellent mechanism for avoiding an inadvertent failure to timely submit a claim for priority under 35 U.S.C. 119, 120, or 121.

Comment (34): One comment noted that the heading ''DECLARATION'' does not state the types of applications with which the declaration form could be used. The comment questioned whether it is intended to be used with any type of nonprovisional application except plant applications for which a separate form is proposed.

Response: The declaration form containing the heading ''DECLARATION'' is intended to be used with any type of nonprovisional application except plant applications, for which a separate Plant Declaration form is provided.

Comment (35): One comment suggested that in the foreign priority claim section of the Declaration form, the last line, the phrase ''having a filing date before that of the application on which priority is claimed'' should be changed to ''for which priority is not claimed,'' to cover those foreign applications which have a filing date after that of the application on which priority is claimed and the benefit of which applicant does not want to claim. The comment also indicated that, frequently, an application is filed after the Convention Year.

Response: The suggestion is not adopted. Section 1.63(c) requires that an oath or declaration in any application in which a claim for priority is made pursuant to § 1.55 identify * * * ''any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing.'' Thus, the language in the Declaration form aids applicants in submitting a declaration in compliance with § 1.63(c). Any foreign application having a filing date before that of the application on which priority is claimed is, by definition, a foreign application for which priority is not claimed.

Comment (36): One comment suggested that in the foreign priority claim section, the right hand columns, the heading should be corrected to ''Certified Copy Attached'' since the Office does not routinely want uncertified copies.

Response: The suggestion is adopted. The Declaration form has been modified accordingly.

Comment (37): One comment noted that the Fee Calculation and Application Transmittal are currently on a single sheet/form, where the proposed forms provide a separate sheet/form for each. The comment also noted that the current Declaration form is a single sheet, where the proposed Declaration form contains multiple sheets.

Response: The Office currently receives application transmittals, fee calculations/transmittals and declarations in a variety of forms and in a multitude of formats. The proposed forms were developed as a result of an analysis of the current practices and requirements of applicants, as well as the Office's plans to scan application data from these forms into an electronic data base. The Fee Transmittal form was created to aid applicants in submitting the fees due on filing a new patent application, as well as the fees that may be due throughout the prosecution of the application. The Application Transmittal serves to both aid applicants in filing a complete application, and simplify the pre-examination processing of the application. To permit the inclusion of additional fee calculation and application transmittal information on the standardized forms, and to provide a Fee Transmittal form for use throughout the prosecution of the application, a separate Fee Transmittal form and Application Transmittal form were developed. A multi-page Declaration form is necessary to accommodate the Office's plans to scan application data from this Declaration form into an electronic data base.

Comment (38): One comment indicated that the meaning or purpose of ''suffix'' in the inventor signature block is unclear, and requested an explanation as to whether it refers to ''Jr.'' or ''II,'' or whether it is a place to put the mother's name for those inventors whose family name is followed by their mother's name.

Response: The field on the Declaration form labeled (inventor) ''suffix'' is intended to provide the applicant with an option to indicate family position relative to age. Examples of an inventor's suffix are: Jr., Sr., and III. This information is tracked by the Office and is necessary to print patents which accurately reflect bibliographic information about the inventor. The use of this field and the data expected will be clarified and specified in the form instructions.

Comment (39): One comment questioned the meaning or purpose of ''Applicant Authority'' in the last line of the inventor data block.

Response: The phrase ''Applicant Authority'' indicates the authority that the applicant has in executing the application (e.g., inventor, executor (§ 1.42), assignee (§ 1.47(b)). This field is an optional field for the applicant to complete. The electronic versions of the proposed standard declaration forms would provide the applicant with directions and a list of valid codes that correspond with a specific identification of the authority the applicant retains (*e.g.*, the Authority Code for an executor will be ''04'').

Comment (40): One comment stated that due to the spacing and small fonts on the fee transmittal form, this sheet cannot be used with a conventional word processor.

Response: To accommodate all the fee descriptions on a one-page fee transmittal it was necessary to use smaller fonts in the form's design. These fonts are available in Word and WordPerfect. An electronic version of the fee transmittal will be available from the Office soon.

Comment (41): One comment stated that the ''one form fits all'' mentality of the fee transmittal form should be reconsidered since certain fees are submitted only once during the prosecution of an application.

Response: The proposed standard one-page fee form is primarily to facilitate and simplify the fee payment process. The one-page fee transmittal is intended to aid applicants in providing complete fee information to the Office for each application and paper submission. This will enable the Office to more efficiently process and record fee payments, which will avoid delays in the prosecution of an application.

Other Considerations

This final rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612, and the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* It has been determined that this final rule is not significant for the purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal effect of this rule change is to simplify and clarify the rules governing the form of patent application papers.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and

the States as outlined in Executive Order 12612.

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

This final rule package contains a collection of information subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This collection of information is currently approved by the Office of Management and Budget under Control No. 0651–0032. This collection of information includes the initial patent application filing, the Fee Transmittal form, the Utility Patent Application Transmittal form, the Design Patent Application Transmittal form, the Plant Patent Application Transmittal form, the Plant Color Coding Sheet, the Declaration form, and the Plant Patent Application Declaration form. The above-mentioned forms will reduce the burden and uncertainty associated with the submission of an application and related information, and enhance the Office's ability to use standardized automation techniques (optical character recognition, etc.) to record and process information concerning applications. The public reporting burden for these collections of information is estimated to average: (1) Ten hours per response for the specification and drawings of an application, (2) twelve minutes per response for the Fee Transmittal form, (3) twelve minutes per response for the Utility Patent Application Transmittal form, (4) twelve minutes per response for the Design Patent Application Transmittal form, (5) twelve minutes per response for the Plant Patent Application Transmittal form, (6) twelve minutes per response for the Plant Color Coding Sheet, (7) twenty-four minutes per response for the Declaration form, and (8) twenty-four minutes per response for the Plant Patent Application Declaration. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of System Quality and Enhancement, Data Administration Division, Patent and Trademark Office, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: Paperwork Reduction Act Project 0651–0032).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.5 is amended by adding paragraph (f) to read as follows:

§ 1.5 Identification of application, patent or registration.

* * * * *

(f) When a paper concerns a provisional application, it should identify the application as such and include the application number.

3. Section 1.12 is amended by revising paragraph (c) to read as follows:

§ 1.12 Assignment records open to public inspection.

* * * * *

(c) Any request by a member of the public seeking copies of any assignment records of any pending or abandoned patent application preserved in confidence under § 1.14, or any information with respect thereto, must:

(1) Be in the form of a petition accompanied by the petition fee set forth in § 1.17(i); or

(2) Include written authority granting access to the member of the public to the particular assignment records from the applicant or applicant's assignee or attorney or agent of record.

* * * * *

4. Section 1.14 is amended by revising the section heading and paragraphs (a), (b), and (e) to read as follows:

§ 1.14 Patent applications preserved in confidence.

(a) (1) Patent applications are generally preserved in confidence pursuant to 35 U.S.C. 122. No information will be given concerning the filing, pendency, or subject matter of any application for patent, and no access will be given to, or copies furnished of, any application or papers relating thereto, except as set forth in this section.

(2) Status information, which includes information such as whether the application is pending, abandoned, or patented, as well as the application number and filing date, may be supplied:

(i) Concerning an application or any application claiming the benefit of the filing date of the application, if the application has been identified by application number or serial number and filing date in a published patent document,

(ii) Concerning the national stage application or any application claiming the benefit of the filing date of a published international application, if the United States of America has been indicated as a Designated State in the international application, or

(iii) When it has been determined by the Commissioner to be necessary for the proper conduct of business before the Office.

(3) Access to, or copies of, an application may be provided:

(i) When the application is open to the public as provided in § 1.11(b),

(ii) When written authority in that application from the applicant, the assignee of the application, or the attorney or agent of record has been granted,

(iii) When it has been determined by the Commissioner to be necessary for the proper conduct of business before the Office, or

(iv) To any person on written request, without notice to the applicant, when the application is abandoned and available and is:

(A) Referred to in a U.S. patent,

(B) Referred to in an application open to public inspection,

(C) An application which claims the benefit of the filing date of an application open to public inspection, or

(D) An application in which the applicant has filed an authorization to lay open the complete application to the public.

(b) Complete applications (§ 1.51(a)) which are abandoned may be destroyed and hence may not be available for access or copies as permitted by paragraph (a)(3)(iv) of this section after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation.

* * * * *

(e) Any request by a member of the public seeking access to, or copies of, any pending or abandoned application preserved in confidence pursuant to paragraph (a) of this section, or any papers relating thereto, must:

(1) Be in the form of a petition and be accompanied by the petition fee set forth in § 1.17(i); or

(2) Include written authority granting access to the member of the public in that particular application from the applicant or the applicant's assignee or attorney or agent of record.

5. Section 1.52 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.52 Language, paper, writing, margins.

(a) The application, any amendments or corrections thereto, and the oath or declaration must be in the English language except as provided for in § 1.69 and paragraph (d) of this section, or be accompanied by a verified translation of the application and a translation of any corrections or amendments into the English language. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written either by a typewriter or mechanical printer in permanent dark ink or its equivalent in portrait orientation on flexible, strong, smooth, non-shiny, durable, and white paper. All of the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes and electronic reproduction by use of digital imaging and optical character recognition. If the papers are not of the required quality, substitute typewritten or mechanically printed papers of suitable quality will be required. See § 1.125 for filing substitute typewritten or mechanically printed papers constituting a substitute specification when required by the Office.

(b) Except for drawings, the application papers (specification, including claims, abstract, oath or declaration, and papers as provided for in this part and also papers subsequently filed, must have each page plainly written on only one side of a sheet of paper, with the claim or claims commencing on a separate sheet and the abstract commencing on a separate sheet. See §§ 1.72(b) and 1.75(h). The sheets of paper must be the same size and either 21.0 cm. by 29.7 cm. (DIN size A4) or 21.6 cm. by 27.9 cm. (8½ by 11 inches). Each sheet must include a top margin of at least 2.0 cm. (¾ inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 2.0 cm. (¾ inch), and a bottom margin of at least 2.0 cm. (¾ inch), and no holes should be made in the sheets as submitted. The lines of the specification, and any amendments to the specification, must be 1½ or double spaced. The pages of the specification including claims and abstract must be numbered consecutively, starting with 1, the numbers being centrally located above or preferably, below, the text. See § 1.84 for drawings.

* * * * *

6. Section 1.54 is amended by revising paragraph (b) to read as follows:

§ 1.54 Parts of application to be filed together; filing receipt.

* * * * *

(b) Applicant will be informed of the application number and filing date by a filing receipt.

7. Section 1.58 is amended by removing and reserving paragraph (b) and revising the section heading and paragraph (c) to read as follows:

§ 1.58 Chemical and mathematical formulae and tables.

* * * * *

(b) [Reserved]

(c) Chemical and mathematical formulae and tables must be presented in compliance with § 1.52 (a) and (b), except that chemical and mathematical formulae or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation. Typewritten characters used in such formulae and tables must be chosen from a block (nonscript) type font or lettering style having capital letters which are at least 0.21 cm. (0.08 inch) high (*e.g.*, elite type). A space at least 0.64 cm. (¼ inch) high should be provided between complex formulae and tables and the text. Tables should have the lines and columns of data closely spaced to conserve space, consistent with a high degree of legibility.

8. Section 1.62 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.62 File wrapper continuing procedure.

* * * * *

(e) An application filed under this section will utilize the file wrapper and contents of the prior application to constitute the new continuation, continuation-in-part, or divisional application but will be assigned a new application number. Changes to the prior application must be made in the form of an amendment to the prior application as it exists at the time of filing the application under this section. No copy of the prior application or new specification is required. The filing of such a copy or specification will be considered improper, and a filing date as of the date of deposit of the request for an application under this section will not be granted to the application unless a petition with the fee set forth in § 1.17(i) is filed with instructions to cancel the copy or specification.

(f) The filing of an application under this section will be construed to include a waiver of confidence by the applicant under 35 U.S.C. 122 to the extent that any member of the public who is entitled under the provisions of § 1.14 to access to, or information concerning either the prior application or any continuing application filed under the provisions of this section may be given similar access to, or similar information concerning, the other application(s) in the file wrapper.

* * * * *

9. Section 1.72 is amended by revising paragraph (b) to read as follows:

§ 1.72 Title and abstract.

* * * * *

(b) A brief abstract of the technical disclosure in the specification must commence on a separate sheet, preferably following the claims, under the heading ''Abstract of the Disclosure.'' The purpose of the abstract is to enable the Patent and Trademark Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure. The abstract shall not be used for interpreting the scope of the claims.

10. Section 1.75 is amended by revising paragraph (g) and adding paragraphs (h) and (i) to read as follows:

§ 1.75 Claim(s).

* * * * *

(g) The least restrictive claim should be presented as claim number 1, and all dependent claims should be grouped together with the claim or claims to which they refer to the extent practicable.

(h) The claim or claims must commence on a separate sheet.

(i) Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation.

11. Section 1.77 is revised to read as follows:

§ 1.77 Arrangement of application elements.

(a) The elements of the application, if applicable, should appear in the following order:

(1) Utility Application Transmittal Form.

(2) Fee Transmittal Form.

(3) Title of the invention; or an introductory portion stating the name, citizenship, and residence of the applicant, and the title of the invention.

(4) Cross-reference to related applications.

(5) Statement regarding federally sponsored research or development.

(6) Reference to a ''Microfiche appendix.'' (See § 1.96 (c)). The total number of microfiche and total number of frames should be specified.

(7) Background of the invention.

(8) Brief summary of the invention.

(9) Brief description of the several views of the drawing.

(10) Detailed description of the invention.

(11) Claim or claims.

(12) Abstract of the Disclosure.

(13) Drawings.

(14) Executed oath or declaration.

(15) Sequence Listing (See §§ 1.821 through 1.825).

(b) The elements set forth in paragraphs (a)(3) through (a)(5), (a)(7) through (a)(12) and (a)(15) of this section should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase ''Not Applicable'' should follow the section heading.

12. Section 1.78 is amended by removing paragraph (d) and revising paragraphs (a)(2) and (c) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a) * * *

(2) Any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(a)).

* * * * *

(c) Where an application or a patent under reexamination and at least one other application naming different inventors are owned by the same party and contain conflicting claims, and there is no statement of record indicating that the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, the assignee may be called upon to state whether the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, and if not, indicate which named inventor is the prior inventor.

13. Section 1.84 is amended by revising paragraphs (c), (f), (g), and (x) to read as follows:

§ 1.84 Standards for drawings.

* * * * *

(c) *Identification of drawings.* Identifying indicia, if provided, should include the application number or the title of the invention, inventor's name, docket number (if any), and the name and telephone number of a person to call if the Office is unable to match the drawings to the proper application. This information should be placed on the back of each sheet of drawings a minimum distance of 1.5 cm. (5/8 inch) down from the top of the page. In addition, a reference to the application number, or, if an application number has not been assigned, the inventor's name, may be included in the left-hand corner, provided that the reference appears within 1.5 cm. (9/16 inch) from the top of the sheet.

* * * * *

(f) *Size of paper.* All drawing sheets in an application must be the same size. One of the shorter sides of the sheet is regarded as its top. The size of the sheets on which drawings are made must be:

(1) 21.0 cm. by 29.7 cm. (DIN size A4), or

(2) 21.6 cm. by 27.9 cm. (8½ by 11 inches).

(g) *Margins.* The sheets must not contain frames around the sight; *i.e.,* the usable surface, but should have scan target points, *i.e.,* cross-hairs, printed on two catercorner margin corners. Each sheet must include a top margin of at least 2.5 cm. (1 inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 1.5 cm. (9/16 inch), and a bottom margin of at least 1.0 cm. (3/8 inch), thereby leaving a sight no greater than 17.0 cm. by 26.2 cm. on 21.0 cm. by 29.7 cm. (DIN size A4) drawing sheets, and a sight no greater than 17.6 cm. by 24.4 cm. (6 15/16 by 9 5/8 inches) on 21.6 cm. by 27.9 cm. (8½ by 11 inch) drawing sheets.

* * * * *

(x) *Holes.* No holes should be made by applicant in the drawing sheets. (See § 1.152 for design drawings, § 1.165 for plant drawings, and § 1.174 for reissue drawings.)

14. Section 1.96 is revised to read as follows:

§ 1.96 Submission of computer program listings.

(a) *General.* Descriptions of the operation and general content of computer program listings should appear in the description portion of the specification. A computer program listing for the purpose of this section is defined as a printout that lists in appropriate sequence the instructions, routines, and other contents of a program for a computer. The program listing may be either in machine or machine-independent (object or source) language which will cause a computer to perform a desired procedure or task such as solve a problem, regulate the flow of work in a computer, or control or monitor events. Computer program listings may be submitted in patent applications as set forth in paragraphs (b) and (c) of this section.

(b) *Material which will be printed in the patent.* If the computer program listing is contained on ten printout pages or less, it must be submitted either as drawings or as part of the specification.

(1) *Drawings.* If the listing is submitted as drawings, it must be submitted in the manner and complying with the requirements for drawings as provided in § 1.84. At least one figure numeral is required on each sheet of drawing.

(2) *Specification.* (i) If the listing is submitted as part of the specification, it must be submitted in accordance with the provisions of § 1.52, at the end of the description but before the claims.

(ii) Any listing submitted as part of the specification must be direct printouts (*i.e.,* not copies) from the computer's printer with dark solid black letters not less than 0.21 cm. high, on white, unshaded and unlined paper, and the sheets should be submitted in a protective cover. Any amendments must be made by way of submission of substitute sheets.

(c) *As an appendix which will not be printed.* If a computer program listing printout is eleven or more pages long, applicants must submit such listing in the form of microfiche, referred to in the specification (see § 1.77(a)(6)). Such microfiche filed with a patent application is to be referred to as a ''microfiche appendix.'' The ''microfiche appendix'' will not be part of the printed patent. Reference in the application to the ''microfiche appendix'' must be made at the beginning of the specification at the location indicated in § 1.77(a)(6). Any amendments thereto must be made by way of revised microfiche.

(1) *Availability of appendix.* Such computer program listings on

microfiche will be available to the public for inspection, and microfiche copies thereof will be available for purchase with the file wrapper and contents, after a patent based on such application is granted or the application is otherwise made publicly available.

(2) *Submission requirements.* Except as modified or clarified in this paragraph (c)(2), computer-generated information submitted as a ''microfiche appendix'' to an application shall be in accordance with the standards set forth in 36 CFR part 1230 (Micrographics).

(i) Film submitted shall be a first generation (camera film) negative appearing microfiche (with emulsion on the back side of the film when viewed with the images right-reading).

(ii) Reduction ratio of microfiche submitted should be 24:1 or a similar ratio where variation from said ratio is required in order to fit the documents into the image area of the microfiche format used.

(iii) At least the left-most third (50 mm.×12 mm.) of the header or title area of each microfiche submitted shall be clear or positive appearing so that the Patent and Trademark Office can apply an application number and filing date thereto in an eye-readable form. The middle portion of the header shall be used by applicant to apply an eye-readable application identification such as the title and/or the first inventor's name. The attorney's docket number may be included. The final right-hand portion of the microfiche shall contain sequence information for the microfiche, such as 1 of 4, 2 of 4, *etc.*

(iv) Additional requirements which apply specifically to microfiche of filmed paper copy:

(A) The first frame of each microfiche submitted shall contain a test target.

(B) The second frame of each microfiche submitted must contain a fully descriptive title and the inventor's name as filed.

(C) The pages or lines appearing on the microfiche frames should be consecutively numbered.

(D) Pagination of the microfiche frames shall be from left to right and from top to bottom.

(E) At a reduction of 24:1, resolution of the original microfilm shall be at least 120 lines per mm. (5.0 target).

(F) An index, when included, should appear in the last frame (lower right-hand corner when data is right-reading) of each microfiche.

(v) Microfiche generated by Computer Output Microfilm.

(A) The first frame of each microfiche submitted should contain a resolution test frame.

(B) The second frame of each microfiche submitted must contain a fully descriptive title and the inventor's name as filed.

(C) The pages or lines appearing on the microfiche frames should be consecutively numbered.

(D) It is preferred that pagination of the microfiche frames be from left to right and top to bottom but the alternative, *i.e.*, from top to bottom and from left to right, is also acceptable.

(E) An index, when included, should appear on the last frame (lower right-hand corner when data is right-reading) of each microfiche.

15. Section 1.97 is amended by revising paragraphs (a) through (d) to read as follows:

§ 1.97 Filing of information disclosure statement.

(a) In order for an applicant for a patent or for a reissue of a patent to have an information disclosure statement in compliance with § 1.98 considered by the Office during the pendency of the application, it must satisfy paragraph (b), (c), or (d) of this section.

(b) An information disclosure statement shall be considered by the Office if filed by the applicant:

(1) Within three months of the filing date of a national application;

(2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application; or

(3) Before the mailing date of a first Office action on the merits, whichever event occurs last.

(c) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (b) of this section, provided that the statement is accompanied by either a certification as specified in paragraph (e) of this section or the fee set forth in § 1.17(p), and is filed before the mailing date of either:

(1) A final action under § 1.113; or

(2) A notice of allowance under § 1.311, whichever occurs first.

(d) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (c) of this section, provided that the statement is filed on or before payment of the issue fee and is accompanied by:

(1) A certification as specified in paragraph (e) of this section;

(2) A petition requesting consideration of the information disclosure statement; and

(3) The petition fee set forth in § 1.17(i).

* * * * *

16. Section 1.107 is amended by revising paragraph (a) to read as follows:

§ 1.107 Citation of references.

(a) If domestic patents are cited by the examiner, their numbers and dates, and the names of the patentees must be stated. If foreign published applications or patents are cited, their nationality or country, numbers and dates, and the names of the patentees must be stated, and such other data must be furnished as may be necessary to enable the applicant, or in the case of a reexamination proceeding, the patent owner, to identify the published applications or patents cited. In citing foreign published applications or patents, in case only a part of the document is involved, the particular pages and sheets containing the parts relied upon must be identified. If printed publications are cited, the author (if any), title, date, pages or plates, and place of publication, or place where a copy can be found, shall be given.

* * * * *

17. Section 1.110 is revised to read as follows:

§ 1.110 Inventorship and date of invention of the subject matter of individual claims.

When more than one inventor is named in an application or patent, the Patent and Trademark Office, when necessary for purposes of an Office proceeding, may require an applicant, patentee, or owner to identify the inventive entity of the subject matter of each claim in the application or patent. Where appropriate, the invention dates of the subject matter of each claim and the ownership of the subject matter on the date of invention may be required of the applicant, patentee or owner. See also §§ 1.78(c) and 1.130.

18. A new § 1.130 is added after the undesignated center heading ''Affidavits Overcoming Rejections'' to read as follows:

§ 1.130 Affidavit or declaration to disqualify commonly owned patent as prior art.

(a) When any claim of an application or a patent under reexamination is rejected under 35 U.S.C. 103 in view of a U.S. patent which is not prior art under 35 U.S.C. 102(b), and the inventions defined by the claims in the application or patent under reexamination and by the claims in the patent are not identical but are not patentably distinct, and the inventions are owned by the same party, the applicant or owner of the patent under reexamination may disqualify the patent as prior art. The patent can be disqualified as prior art by submission of:

(1) A terminal disclaimer in accordance with § 1.321(c), and

(2) An oath or declaration stating that the application or patent under reexamination and the patent are currently owned by the same party, and that the inventor named in the application or patent under reexamination is the prior inventor under 35 U.S.C. 104.

(b) When an application or a patent under reexamination claims an invention which is not patentably distinct from an invention claimed in a commonly owned patent with the same or a different inventive entity, a double patenting rejection will be made in the application or a patent under reexamination. A judicially created double patenting rejection may be obviated by filing a terminal disclaimer in accordance with § 1.321(c).

19. Section 1.131 is amended by revising paragraph (a) to read as follows:

§ 1.131 Affidavit or declaration of prior invention to overcome cited patent or publication.

(a) (1) When any claim of an application or a patent under reexamination is rejected under 35 U.S.C. 102 (a) or (e), or 35 U.S.C. 103 based on a U.S. patent to another or others which is prior art under 35 U.S.C. 102 (a) or (e) and which substantially shows or describes but does not claim the same patentable invention, as defined in § 1.601(n), or on reference to a foreign patent or to a printed publication, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to overcome the patent or publication. The oath or declaration must include facts showing a completion of the invention in this country or in a NAFTA or WTO member country before the filing date of the application on which the U.S. patent issued, or before the date of the foreign patent, or before the date of the printed publication. When an appropriate oath or declaration is made, the patent or publication cited shall not bar the grant of a patent to the inventor or the confirmation of the patentability of the claims of the patent, unless the date of such patent or printed publication is more than one year prior to the date on which the inventor's or patent owner's application was filed in this country.

(2) A date of completion of the invention may not be established under this section before December 8, 1993, in a NAFTA country, or before January 1, 1996, in a WTO member country other than a NAFTA country.

* * * * *

20. Section 1.132 is revised to read as follows:

§ 1.132 Affidavits or declarations traversing grounds of rejection.

When any claim of an application or a patent under reexamination is rejected on reference to a U.S. patent which substantially shows or describes but does not claim the same patentable invention, as defined in § 1.601(n), on reference to a foreign patent, on reference to a printed publication, or on reference to facts within the personal knowledge of an employee of the Office, or when rejected upon a mode or capability of operation attributed to a reference, or because the alleged invention is held to be inoperative, lacking in utility, frivolous, or injurious to public health or morals, affidavits or declarations traversing these references or objections may be received.

21. Section 1.154 is revised to read as follows:

§ 1.154 Arrangement of specification.

(a) The elements of the design application, if applicable, should appear in the following order:

(1) Design Application Transmittal Form.

(2) Fee Transmittal Form.

(3) Preamble, stating name of the applicant and title of the design.

(4) Cross-reference to related applications.

(5) Statement regarding federally sponsored research or development.

(6) Description of the figure or figures of the drawing.

(7) Feature Description.

(8) A single claim.

(9) Drawings or photographs.

(10) Executed oath or declaration (See § 1.153(b)).

(b) [Reserved]

22. Section 1.163 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 1.163 Specification.

* * * * *

(c) The elements of the plant application, if applicable, should appear in the following order:

(1) Plant Application Transmittal Form.

(2) Fee Transmittal Form.

(3) Title of the invention.

(4) Cross-reference to related applications.

(5) Statement regarding federally sponsored research or development.

(6) Background of the invention.

(7) Brief summary of the invention.

(8) Brief description of the drawing.

(9) Detailed Botanical Description.

(10) A single claim.

(11) Abstract of the Disclosure.

(12) Drawings (in duplicate).

(13) Executed oath or declaration.

(14) Plant color coding sheet.

(d) A plant color coding sheet as used in this section means a sheet that specifies a color coding system as designated in a color dictionary, and lists every plant structure to which color is a distinguishing feature and the corresponding color code which best represents that plant structure.

23. Section 1.291 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) Protests by a member of the public against pending applications will be referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file if:

(1) The protest is submitted prior to the mailing of a notice of allowance under § 1.311; and

(2) The protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible.

(b) Protests raising fraud or other inequitable conduct issues will be entered in the application file, generally without comment on those issues. Protests which do not adequately identify a pending patent application will be returned to the protestor and will not be further considered by the Office. A protest submitted in accordance with the second sentence of paragraph (a) of this section will be considered by the Office if the application is still pending when the protest and application file are brought before the examiner and it includes:

(1) A listing of the patents, publications, or other information relied upon;

(2) A concise explanation of the relevance of each listed item;

(3) A copy of each listed patent or publication or other item of information in written form or at least the pertinent portions thereof; and

(4) An English language translation of all the necessary and pertinent parts of any non-English language patent, publication, or other item of information in written form relied upon.

* * * * *

24. Section 1.292 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.292 Public use proceedings.

(a) When a petition for the institution of public use proceedings, supported by affidavits or declarations is found, on reference to the examiner, to make a *prima facie* showing that the invention claimed in an application believed to be on file had been in public use or on sale more than one year before the filing of the application, a hearing may be had before the Commissioner to determine whether a public use proceeding should be instituted. If instituted, the Commissioner may designate an appropriate official to conduct the public use proceeding, including the setting of times for taking testimony, which shall be taken as provided by §§ 1.671 through 1.685. The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

(b) The petition and accompanying papers, or a notice that such a petition has been filed, shall be entered in the application file if:

(1) The petition is accompanied by the fee set forth in § 1.17(j);

(2) The petition is served on the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible; and

(3) The petition is submitted prior to the mailing of a notice of allowance under § 1.311.

* * * * *

25. Section 1.315 is revised to read as follows:

§ 1.315 Delivery of patent.

The patent will be delivered or mailed upon issuance to the correspondence address of record. See § 1.33(a).

26. Section 1.321 is amended by revising paragraph (c) to read as follows:

§ 1.321 Statutory disclaimers, including terminal disclaimers.

* * * * *

(c) A terminal disclaimer, when filed to obviate a judicially created double patenting rejection in a patent application or in a reexamination proceeding, must:

(1) Comply with the provisions of paragraphs (b)(2) through (b)(4) of this section;

(2) Be signed in accordance with paragraph (b)(1) of this section if filed in a patent application or in accordance with paragraph (a)(1) of this section if filed in a reexamination proceeding; and

(3) Include a provision that any patent granted on that application or any patent subject to the reexamination proceeding shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the rejection.

27. Section 1.497 is revised to read as follows:

§ 1.497 Oath or declaration under 35 U.S.C. 371(c)(4).

(a) When an applicant of an international application desires to enter the national stage under 35 U.S.C. 371 pursuant to §§ 1.494 or 1.495, he or she must file an oath or declaration that:

(1) Is executed in accordance with either §§ 1.66 or 1.68;

(2) Identifies the specification to which it is directed;

(3) Identifies each inventor and the country of citizenship of each inventor; and

(4) States that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

(b)(1) The oath or declaration must be made by all of the actual inventors except as provided for in §§ 1.42, 1.43 or 1.47.

(2) If the person making the oath or declaration is not the inventor, the oath or declaration shall state the relationship of the person to the inventor, the facts required by §§ 1.42, 1.43 or 1.47, and, upon information and belief, the facts which the inventor would have been required to state.

(c) If the oath or declaration meets the requirements of paragraphs (a) and (b) of this section, the oath or declaration will be accepted as complying with 35 U.S.C. 371(c)(4) and §§ 1.494(c) or 1.495(c). However, if the oath or declaration does not also meet the requirements of § 1.63, a supplemental oath or declaration in compliance with § 1.63 will be required in accordance with § 1.67.

Dated: August 13, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–21073 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–16–P

37 CFR Parts 15 and 15a

[Docket No. 960722200–6200–01]

RIN 0651–XX07

Service of Process; Testimony by Employees and the Production of Documents in Legal Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This final rule removes parts dealing with service of process on Patent and Trademark Office (PTO) employees in their official capacity and with testimony by employees and production of documents in legal proceedings. The PTO will rely on analogous Commerce Department regulations found in title 15 of the Code of Federal Regulations.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth Corsello by telephone at (703) 305–9041; by mail marked to his attention and addressed to the Office of the Solicitor, Box 8, Washington, D.C. 20231; by electronic mail to corsello@uspto.gov; or by fax marked to his attention at (703) 305–9373.

SUPPLEMENTARY INFORMATION: In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake, as part of this initiative, an exhaustive review of all of their regulations—with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This final rule is part of the Regulatory Reform Initiative.

The Department of Commerce regulations dealing with service of process (15 CFR Part 15) and with employee testimony and the production of documents (15 CFR Part 15a) apply to the PTO. Therefore, the PTO is removing 37 CFR Parts 15 and 15a because they are unnecessary and duplicative.

This rule is not a significant rule for the purposes of Executive Order 12866. Notice and comment is not required for this rulemaking because it relates to agency management or personnel, 5 U.S.C. 553(a)(2), and thus no regulatory flexibility analysis is required, 5 U.S.C. 603(a). This rule does not change the paperwork burden imposed on the public. See 44 U.S.C. 3501 *et seq.*

List of Subjects

37 CFR Part 15

Administrative practice and procedure, Attorneys, Courts, Government employees.

37 CFR Part 15a

Administrative practice and procedure, Attorneys, Courts, Government employees.

For the reasons set forth in the preamble, and pursuant to the authority

contained in 35 U.S.C. 6, 37 CFR Chapter I is amended as follows:

PART 15—[REMOVED AND RESERVED]

1. Part 15 is removed and reserved.

PART 15a—[REMOVED AND RESERVED]

1. Part 15a is removed and reserved.

Dated: August 13, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–21067 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5553–3]

New Stationary Sources; Supplemental Delegation of Authority to Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Nashville-Davidson County, Tennessee and Knox County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The States or Local Agencies of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Nashville-Davidson County, Tennessee and Knox County, Tennessee requested that EPA delegate authority for implementation and enforcement of additional categories of New Source Performance Standards (NSPS). The EPA's review of their pertinent laws, rules, and regulations prove to be adequate and effective procedures for the implementation and enforcement of these Federal standards. This document was written to inform the public of delegations that were made to the above mentioned Agencies for which a document was not previously written.

EFFECTIVE DATE: The effective date is listed as the date of delegation and can be found in the **SUPPLEMENTARY INFORMATION** Section of this action.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

Kentucky Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289–0385.

North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626–0535.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Knox County Department of Air Pollution Control, City/County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee 37902–2045.

Nashville-Davidson County Metropolitan Health Department, 311—23rd Avenue, North, Nashville, Tennessee 37203.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address:

Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

Kentucky Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289–0385.

North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626–0535.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Knox County Department of Air Pollution Control, City/County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee 37902–2045.

Nashville-Davidson County Metropolitan Health Department, 311–23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Environmental Protection Agency, Region 4, 345 Courtland Street N.E., Atlanta, Georgia 30365, (404) 347–3555, x4195.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, New Source Performance Standards (NSPS).

The EPA has already delegated the authority for implementation and enforcement of the NSPS programs to the State or Local Agencies of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Nashville-Davidson County, Tennessee and Knox County, Tennessee. These Agencies have subsequently requested a delegation of authority for implementation and enforcement of the following NSPS categories found in 40 CFR Part 60.

40 CFR Part 60

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF ALABAMA

Category	Subpart	Date delegated
Fossil Fuel Fired Steam Generators	D	02/3/92
Electric Utility Steam Generating Units	Da	02/20/91
Industrial Boilers	Db	02/20/91

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF ALABAMA—Continued

Category	Subpart	Date delegated
Incinerators	E	02/20/91
Municipal Combustors	Ea	02/03/92
Ferroalloy Production Facilities	Z	02/20/91
Kraft Pulp Mills	BB	02/20/91
Surface Coating of Metal Furniture	EE	02/03/92
Pressure Sensitive Tape and Label Surface Coating Operations	RR	02/03/92
Industrial Surface Coating: Large Appliances	SS	02/03/92
Metal Coil Surface Coating	TT	02/03/92
Beverage Can Surface Coating Industry	WW	02/03/92
Rubber Tire Manufacturing Industry	BBB	02/20/91
VOC Emissions from the Polymer Manufacturing Industry	DDD	02/20/91
Synthetic Fiber Production Facilities	HHH	02/03/92
VOC Emissions from SOCMI Air Oxidation Unit Processes	III	06/10/91
Petroleum Dry Cleaners	JJJ	06/02/87
Onshore Natural Gas Processing—VOC	KKK	06/02/87
Onshore Natural Gas Processing—SO_2	LLL	06/02/87
VOC Emissions from SOCMI Distillation Operations	NNN	06/10/91
Nonmetallic Mineral Processing Plants	OOO	10/30/89
Wool Fiberglass Insulation	PPP	10/30/89
VOC Emissions from Petroleum Refinery Wastewater Systems	QQQ	10/30/89
VOC Emissions from SOCMI Reactor Processes	RRR	11/29/95
Magnetic Tape Coating Facilities	SSS	10/30/89
Plastic Parts for Business Machines Coating	TTT	02/03/92
Calciners and Dryers in Mineral Industries	UUU	02/01/96
Polymeric Coating of Supporting Substrates Facilities	VVV	02/20/91

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF FLORIDA

Category	Subpart	Date delegated
Primary Copper Smelters	P	09/03/93
Primary Zinc Smelters	Q	09/03/93
Primary Lead Smelters	R	09/03/93
Primary Aluminum Reduction Plants	S	09/03/93
Coal Preparation Plants	Y	09/03/93
Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (8/7/93)	AAa	09/03/93
Glass Manufacturing Plants	CC	09/03/93
Surface Coating of Metal Furniture	EE	09/03/93
Lead-Acid Battery Manufacturing Plants	KK	09/03/93
Metallic Mineral Processing Plants	LL	09/03/93
Phosphate Rock Plants	NN	09/03/93
Graphic Arts Industry: Publication Rotogravure Printing	QQ	09/03/93
Pressure Sensitive Tape and Label Surface Coating Operations	RR	09/03/93
Industrial Surface Coating: Large Appliances	SS	09/03/93
Metal Coil Surface Coating	TT	09/03/93
Asphalt Processing and Asphalt Roofing Manufacture	UU	09/03/93
Equipment Leaks of VOC in Synthetic Organic Chemical Manufacturing Industry	VV	09/03/93
Beverage Can Surface Coating Industry	WW	09/03/93
Bulk Gasoline Terminals	XX	09/03/93
VOC Emissions from the Polymer Manufacturing Industry	DDD	09/03/93
Flexible Vinyl and Urethane Coating and Printing	FFF	09/03/93
Equipment Leaks of VOC in Petroleum Refineries	GGG	09/03/93
Synthetic Fiber Production Facilities	HHH	09/03/93
VOC Emissions from SOCMI Air Oxidation Unit Processes	III	09/03/93
Petroleum Dry Cleaners	JJJ	09/03/93
Onshore Natural Gas Processing—VOC	KKK	09/03/93
Onshore Natural Gas Processing—SO_2	LLL	09/03/93
VOC Emissions from SOCMI Distillation Operations	NNN	09/03/93
Nonmetallic Mineral Processing Plants	OOO	09/03/93
Wool Fiberglass Insulation	PPP	09/03/93
Polymeric Coating of Supporting Substrates Facilities	VVV	09/03/93

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF GEORGIA

Category	Subpart	Date Delegated
Industrial Boilers	Db	06/02/88

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF GEORGIA—Continued

Category	Subpart	Date Delegated
Petroleum Refineries	J	06/02/88
Storage Vessels for Petroleum Liquids (6/11/73–5/19/78)	K	01/24/89
Storage Vessels for Petroleum Liquids (5/18/78)	Ka	06/02/88
Storage Vessels after (07/23/84)	Kb	06/02/88
Automobile and Light Duty Truck Coating Operations	MM	06/02/88
Graphic Arts Industry: Publication Rotogravure Printing	QQ	06/17/85
Pressure Sensitive Tape and Label Surface Coating Operations	RR	06/17/85
Industrial Surface Coating: Large Appliances	SS	06/17/85
Metal Coil Surface Coating	TT	06/02/88
Residential Wood Heaters	WW	06/17/85
Flexible Vinyl and Urethane Coating and Printing	FFF	06/17/85
Equipment Leaks of VOC in Petroleum Refineries	GGG	06/17/85
Synthetic Fiber Production Facilities	HHH	06/17/85
Petroleum Dry Cleaners	JJJ	06/02/88

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF KENTUCKY

Category	Subpart	Date delegated
Fossil-Fuel Fired Steam Generators (8/71–9/78)	D	07/06/82
Electric Utility Steam Generating Units (9/78)	Da	03/26/81
Incinerators	E	04/12/77

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF MISSISSIPPI

Category	Subpart	Date delegated
Fossil-Fuel Fired Steam Generators (8/71–9/78)	D	09/09/91
Electric Utility Steam Generating Units (9/78)	Da	09/09/91
Industrial Boilers	Db	09/09/91
Small Industrial-Commercial-Institutional Steam Gen.	Dc	09/09/91
Incinerators	E	09/09/91
Municipal Combustors	Ea	09/09/91
Portland Cement Plants	F	09/09/91
Nitric Acid Plants	G	09/09/91
Sulfuric Acid Plants	H	09/09/91
Hot Mix Asphalt Facilities	I	09/09/91
Petroleum Refineries	J	09/09/91
Secondary Lead Smelters	L	09/09/91
Secondary Brass and Bronze Ingot Production Plants	M	09/09/91
Iron and Steel Plants	N	09/09/91
Secondary Emissions From BOP Steel Facilities (01/20/83)	Na	09/09/91
Sewage Treatment Plants	O	09/09/91
Primary Copper Smelters	P	09/09/91
Primary Zinc Smelters	Q	09/09/91
Primary Lead Smelters	R	09/09/91
Primary Aluminum Reduction Plants	S	09/09/91
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	T	09/09/91
Phosphate Fertilizer Industry: Superphosphoric Acid Plants	U	09/09/91
Phosphate Fertilizer Industry: Diammonium Phosphate Plants	V	09/09/91
Phosphate Fertilizer Industry: Triple Superphosphate Plants	W	09/09/91
Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage	X	09/09/91
Coal Preparation Plants	Y	09/09/91
Ferroalloy Production Facilities	Z	09/09/91
Steel Plants: Electric Arc Furnaces	AA	09/09/91
Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization	AAa	09/09/91
Kraft Pulp Mills	BB	09/09/91
Glass Manufacturing Plants	CC	09/09/91
Grain Elevators	DD	09/09/91
Surface Coating of Metal Furniture	EE	09/09/91
Stationary Gas Turbines	GG	09/09/91
Lime Manufacturing Plants	HH	09/09/91
Lead-Acid Battery Manufacturing Plants	KK	09/09/91
Metallic Mineral Processing Plants	LL	09/09/91
Automobile and Light Duty Truck Coating Operations	MM	09/09/91
Phosphate Rock Plants	NN	09/09/91
Ammonium Sulfate Manufacture	PP	09/09/91

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF MISSISSIPPI—Continued

Category	Subpart	Date delegated
Graphic Arts Industry: Publication Rotogravure Printing	QQ	06/13/84
Pressure Sensitive Tape and Label Surface Coating Operations	RR	09/09/91
Industrial Surface Coating: Large Appliances	SS	09/09/91
Metal Coil Surface Coating	TT	09/09/91
Asphalt Processing and Asphalt Roofing Manufacture	UU	09/09/91
Equipment Leaks of VOC in Synthetic Organic Chemical Manufacturing Industry	VV	09/09/91
Beverage Can Surface Coating Industry	WW	09/09/91
Bulk Gasoline Terminals	XX	09/09/91
Rubber Tire Manufacturing Industry	BBB	09/09/91
VOC Emissions from the Polymer Manufacturing Industry	DDD	09/09/91
Flexible Vinyl and Urethane Coating and Printing	FFF	09/20/85
Equipment Leaks of VOC in Petroleum	GGG	09/20/85
Synthetic Fiber Production Facilities	HHH	09/09/91
VOC Emissions from SOCMI Air Oxidation Unit Processes	III	09/09/91
Petroleum Dry Cleaners	JJJ	12/19/86
Onshore Natural Gas Processing—VOC	KKK	12/19/86
Onshore Natural Gas Processing—SO_2	LLL	09/09/91
VOC Emissions from SOCMI Distillation Operations	NNN	09/09/91
Nonmetallic Mineral Processing Plants	OOO	09/09/91
Wool Fiberglass Insulation	PPP	09/09/91
VOC Emissions from Petroleum Refinery Wastewater Systems	QQQ	05/31/89
VOC Emissions from SOCMI Reactor Processes	RRR	02/16/94
Magnetic Tape Coating Facilities	SSS	05/31/89
Plastic Parts for Business Machines Coating	TTT	09/09/91
Calciners and Dryers in Mineral Industries	UUU	02/16/94
Polymeric Coating of Supporting Substrates Facilities	VVV	09/09/91

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF NORTH CAROLINA

Category	Subpart	Date delegated
Electric Utility Steam Generating Units (9/78)	Da	12/04/81
Small Industrial-Commercial-Institutional Steam Gen	Dc	02/27/95
Incinerators	E	11/24/76
Municipal Combustors	Ea	02/27/95
Portland Cement Plants	F	11/24/76
Nitric Acid Plants	G	11/24/76
Sulfuric Acid Plants	H	11/24/76
Hot Mix Asphalt Facilities	I	11/24/76
Storage Vessels for Petroleum Liquids (6/11/73–5/19/78)	K	11/24/76
Secondary Lead Smelters	L	11/24/76
Secondary Brass and Bronze Ingot Production Plants	M	11/24/76
Sewage Treatment Plants	O	11/24/76
Primary Copper Smelters	P	11/24/76
Primary Zinc Smelters	Q	11/24/76
Primary Lead Smelters	R	11/24/76
Primary Aluminum Reduction Plants	S	11/24/76
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	T	11/24/76
Phosphate Fertilizer Industry: Superphosphoric Acid Plants	U	11/24/76
Phosphate Fertilizer Industry: Diammonium Phosphate Plants	V	11/24/76
Phosphate Fertilizer Industry: Triple Superphosphate Plants	W	11/24/76
Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage	X	11/24/76
Coal Preparation Plants	Y	11/24/76
Ferroalloy Production Facilities	Z	10/22/80
Steel Plants: Electric Arc Furnaces	AA	11/24/76
Kraft Pulp Mills	BB	10/22/80
Glass Manufacturing Plants	CC	10/19/82
Grain Elevators	DD	10/22/80
Stationary Gas Turbines	GG	12/04/81
Lead-Acid Battery Manufacturing Plants	KK	10/19/82
Automobile and Light Duty Truck Coating Operations	MM	10/19/82
Phosphate Rock Plants	NN	10/19/82
Ammonium Sulfate Manufacture	PP	10/19/82
VOC Emissions from the Polymer Manufacturing Industry	DDD	02/27/95
VOC Emissions from Petroleum Refinery Wastewater Systems	QQQ	08/29/89
Magnetic Tape Coating Facilities	SSS	08/29/89
Plastic Parts for Business Machines Coating	TTT	08/29/89
Calciners and Dryers in Mineral Industries	UUU	02/27/95

NSPS DELEGATION OF AUTHORITY FOR THE STATE OF SOUTH CAROLINA

Category	Subpart	Date Delegated
Industrial Boilers	Db	01/24/89
Portland Cement Plants	F	01/23/90
Graphic Arts Industry: Publication Rotogravure Printing	QQ	04/23/83
Rubber Tire Manufacturing Industry	BBB	01/23/90
VOC Emissions from SOCMI Air Oxidation Unit Processes	III	08/07/90
VOC Emissions from SOCMI Distillation Operations	NNN	08/07/90
VOC Emissions from Petroleum Refinery Wastewater Systems	QQQ	01/24/89
Magnetic Tape Coating Facilities	SSS	01/23/90
Plastic Parts for Business Machines Coating	TTT	02/23/90
Polymeric Coating of Supporting Substrates Facilities	VVV	01/23/90

NSPS DELEGATION OF AUTHORITY FOR KNOXVILLE, TENNESSEE

Category	Subpart	Date delegated
Calciners and Dryers in Mineral Industries	UUU	04/10/95
Polymeric Coating of Supporting Substrates Facilities	VVV	03/01/90

NSPS DELEGATION OF AUTHORITY FOR NASHVILLE-DAVIDSON, TENNESSEE

Category	Subpart	Date delegated
VOC Emissions from SOCMI Reactor Processes	RRR	09/11/95

The above listed NSPS categories are delegated with the exception of the following sections within those subparts which may not be delegated.

1. Subpart A—§ 60.8(b) (1) thru (5), § 60.11(e) (7) and (8), § 60.13 (g), (i) and (j)(2)
2. Subpart B—§ 60.22, § 60.27, and § 60.29
3. Subpart Da—§ 60.45a
4. Subpart Db—§ 60.44b(f), § 60.44b(g), § 60.49(a)(4)
5. Subpart Dc—§ 60.48c(a)(4)
6. Subpart J—§ 60.105(a)(13)(iii), § 60.106(i)(12)
7. Subpart Ka—§ 60.114a
8. Subpart Kb—§ 60.111b(f)(4), § 60.114b, § 60.116b(e)(3) (iii) and (iv), § 60.116b(f)(2)(iii)
9. Subpart O—§ 60.153(e)
10. Subpart EE—§ 60.316(d)
11. Subpart GG—§ 60.334(b)(2), § 60.335(f)(1)
12. Subpart RR—§ 60.446(c)
13. Subpart SS—§ 60.456(d)
14. Subpart TT—§ 60.466(d)
15. Subpart UU—§ 60.474(g)
16. Subpart VV—§ 60.482–1(c)(2) and § 60.484
17. Subpart WW—§ 60.496(c)
18. Subpart XX—§ 60.502(e)(6)
19. Subpart AAA—§ 60.530(c), § 60.533, § 60.534, § 60.535, § 60.536(i)(2), § 60.537, § 60.538(e), § 60.539
20. Subpart BBB—§ 60.543(c)(2)(ii)(B)
22. Subpart DDD—§ 60.562–2(c)
23. Subpart III—§ 60.613
24. Subpart NNN—§ 60.663(e)
25. Subpart RRR—§ 60.703(e)
26. Subpart SSS—§ 60.711(a)(16), § 60.713(b)(1)(i), § 60.713(b)(1)(ii), § 60.713(b)(5)(i), § 60.713(d), § 60.715(a), § 60.716
27. Subpart TTT—§ 60.723(b)(1), § 60.723(b)(2)(i)(C), § 60.723(b)(2)(iv), § 60.724(e), § 60.725(b)
28. Subpart VVV—§ 60.743(a)(3)(v)(A) and (B), § 60.743(e), § 60.745(a), § 60.746

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for the source categories with the conditions set forth in the original delegation letters of these State or Local agencies. All sources subject to the requirements of 40 CFR Part 60 will now be under the jurisdiction of the above mentioned State or Local Agencies.

Since review of the pertinent laws, rules, and regulations of these State or Local Agencies has shown them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source categories listed on the above various dates. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412, and 7601).

Dated: July 3, 1996.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 96–21077 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 80

[FRL–5555–5]

State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of direct final decision.

SUMMARY: On March 14, 1994, EPA granted the State of Alaska a waiver from the requirements of EPA's low sulfur diesel fuel program, permanently exempting Alaska's remote areas and providing a temporary exemption for areas of Alaska served by the Federal Aid Highway System (FAHS). The exemption applied to certain requirements in section 211(i) and (g) of the Clean Air Act, as implemented in EPA's regulations. These exemptions were based on EPA's determination that it would be unreasonable to require persons in these areas to comply with the low sulfur diesel fuel requirements due to unique geographical, meteorological and economic factors for

Alaska, as well as other significant local factors.

The temporary exemption for the areas of Alaska served by the FAHS will expire on October 1, 1996. On December 12, 1995, the Governor of Alaska petitioned EPA to permanently exempt the areas covered by the temporary exemption. In this decision EPA is extending the temporary exemption for an additional 24 months, but reserving a final decision on whether it should be permanent.

Based on the factors and conditions identified in Alaska's December 12, 1995 petition, a continuation of the exemption is warranted at least temporarily. However, EPA believes that recent comments submitted to the agency merit further investigation before making a final decision on a permanent exemption. EPA is therefore extending the temporary exemption until October 1, 1998, or until such time that a final decision is made on the permanent exemption, whichever is shorter.

This decision will continue the current status in Alaska. It is not expected to have a significant impact on the ability of Alaska's communities to attain the National Ambient Air Quality Standards for carbon monoxide and particulate matter, based on the limited contribution of emissions from diesel motor vehicles in those areas and the sulfur level currently found in motor vehicle diesel fuel used in Alaska.

DATES: This action will become effective October 3, 1996 unless adverse comments or a request for a public hearing are received by September 18, 1996. If EPA receives such comments or a request for a public hearing, EPA will publish a timely notice in the Federal Register withdrawing this rule.

ADDRESSES: Copies of information relevant to this petition are available for inspection in public docket A–96–26 at the Air Docket of the EPA, first floor, Waterside Mall, room M–1500, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548, between the hours of 8:00 a.m. to 5:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Paul N. Argyropoulos, Environmental Protection Specialist, Fuels Implementation Group, Fuels and Energy Division (6406J), 401 M Street S.W., Washington, D.C. 20460, (202) 233–9004.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Regulated Entities

Entities potentially regulated by this action are refiners, marketers, distributors, retailers and wholesale purchaser-consumers of diesel fuel. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Petroluem distributors, marketers, retailers (service station owners and operators), wholesale purchaser consumers (fleet managers who operate a refueling facility to refuel motor vehicles).
Citizens	Any owner or operator of a diesel motor vehicle.
Federal Government	Federal facilities, including military bases which operate a refueling facility to refuel motor vehicles.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the criteria contained in § 80.29 and § 80.30 of title 40 of the Code of Federal Regulations as modified by today's action. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Electronic Copies of Rulemaking Documents

A copy of this document is also available electronically from the EPA Internet site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer per the following information. Any one of the following Internet addresses may be used:

World Wide Web:
http://www.epa.gov/OMSWWW/
Gopher:
gopher://gopher.epa.gov/ Follow menus for: Offices/Air/OMS
FTP:
ftp://ftp.epa.gov/ Change Directory to pub/gopher/OMS

The steps required to access information on this rulemaking on the TTN bulletin board system are listed below.

TTN BBS: 919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit)
Voice help: 919–541–5384
Internet address: TELNET ttnbbs.rtpnc.epa.gov
Off-line: Mondays from 8:00–12:00 Noon ET
1. Technology Transfer Network Top Menu: <T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards) (Command: T)
2. TTN TECHNICAL INFORMATION AREAS: <M> OMS—Mobile Sources Information (Command: M)
3. *OMS BBS—MAIN MENU FILE TRANSFERS: <O> Other OMS Documents (Command: O)*

At this stage, the system will list all available files in this area. To download a file, select a transfer protocol that will match the terminal software on your computer, then set your own software to receive the file using that same protocol. If unfamiliar with handling compressed (that is, ZIP'd) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

III. Background

Section 211(i)(1) of the Act prohibits the manufacture, sale, supply, offering for sale or supply, dispensing, transport, or introduction into commerce of motor

vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight), or which fails to meet a cetane index minimum of 40 beginning October 1, 1993. Section 211(i)(3) establishes the sulfur content for fuel used in the certification of heavy-duty diesel vehicles and engines. Section 211(i)(4) provides that the States of Alaska and Hawaii may seek an exemption from the requirements of this subsection in the same manner as provided in section 325[1] of the Act, and requires the Administrator to take final action on any petition filed under this section, which seeks exemption from the requirements of section 211(i), within 12 months of the date of such petition.

Section 325 of the Act provides that upon application by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from any requirement of the Act, with some specific exceptions. Such exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

IV. Petition for Exemption

On February 12, 1993, the Honorable Walter J. Hickel, Governor of the State of Alaska, submitted a petition to exempt motor vehicle diesel fuel in Alaska from all of the requirements of section 211(i) except the minimum cetane index requirement of 40. The petition requested a short-term exemption for areas accessible by the Federal Aid Highway System (''on-highway'') and a permanent exemption for areas not accessible by the Federal Aid Highway System (''off-highway''). The petition for a short-term exemption requested that EPA exempt motor vehicle diesel fuel manufactured for sale, sold, supplied, or transported within the Federal Aid Highway System (FAHS) from meeting the sulfur content requirement specified in section 211(i) until October 1, 1996. The petition also requested a permanent exemption from such requirements for those areas of Alaska not reachable by the Federal Aid Highway System. The petition was based on geographical, meteorological, air quality, and economic factors unique to the State of Alaska.

The petition was granted on March 14, 1994 and applied to all persons in Alaska subject to section 211(i)(1) and (g) of the Act and EPA's low sulfur requirement for motor vehicle diesel fuel in 40 CFR Part 80.29. Persons in communities served by the FAHS are exempt from compliance with the diesel fuel sulfur content requirement until October 1, 1996. Persons in communities that are not served by the Federal Aid Highway System are permanently exempt from compliance with the diesel fuel sulfur content requirement. Both the permanent and temporary exemption apply to all persons who manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce, in the State of Alaska, motor vehicle diesel fuel. Alaska's exemption does not apply to the minimum cetane requirement for motor vehicle diesel fuel.

On December 12, 1995, the Honorable Governor Knowles petitioned the Administrator for a permanent exemption for all areas of the state covered by the Federal Aid Highway System. This notice addresses EPA's action on the petition submitted on December 12, 1995. We are making a decision now for the 24 month extension and reserving the decision on the state's request for a permanent exemption, so the agency may consider possible alternatives for a longer period.

The following discussion summarizes the state's support for the exemption as provided for in the petition, and the rationale for the agency's extension of the temporary exemption.

A. Geography and Location of the State of Alaska

Alaska is about one-fifth as large as the combined area of the lower 48 states. Because of its extreme northern location, rugged terrain and sparse population, Alaska relies on barges to deliver a large percentage of its petroleum products. No other state relies on this type of delivery system to the extent Alaska does.

Only 35% of Alaska's communities are served by the Federal Aid Highway System, which is a combination of road and marine highways. The remaining 65% of Alaska's communities are served by barge lines and are referred to as off-highway or ''remote'' communities. Although barge lines can directly access some off-highway communities, those communities that are not located on a navigable waterway are served by a two-stage delivery system: over water by barge line and then over land to reach the community.

Because of the State's high latitude, it experiences seasonal extremes in the amount of daily sunlight and temperature, which in turn affects the period of time during which construction can occur, and, ultimately, the cost of construction in Alaska.

According to the petition, Alaska's extreme northern location places it in a unique position to fuel transcontinental cargo flights between Europe, Asia, and North America. Roughly 75% of all air transit freight between Europe and Asia lands in Anchorage, as does that between Asia and the United States. The result is a large market for Jet-A fuel produced by local refiners, which decreases the importance of highway diesel fuel to these refiners. Based on State tax revenue receipts and estimates by Alaska's refiners, diesel fuel consumption for highway use represents roughly 5% of total state distillate fuel consumption.

B. Climate, Meteorology and Air Quality

Alaska's climate is colder than that of the other 49 states. The extremely low temperatures experienced in Alaska during the winter imposes a more severe fuel specification requirement for diesel fuel in Alaska than in the rest of the country. This specification, known as a ''cloud point'' specification[2] significantly affects vehicle start-up and other engine operations. Alaska has the most severe cloud point specification for diesel fuel in the U.S. at −56°F. Because Alaska experiences extremely low temperatures in comparison to the other 49 state's and the cloud point specifications are not as severe for fuel in the lower 48 states, most diesel fuel used in the State of Alaska is produced by refiners located in Alaska. Jet-A kerosene meets the same cloud point specification as No. 1 diesel fuel (which is marketed primarily during the winter in Alaska as opposed to No. 2 diesel fuel which is marketed primarily in the summer) and is commonly mixed with or used as a substitute for No. 1 diesel fuel. However, because Jet-A kerosene can have a sulfur content as high as 0.3%, the diesel fuel sulfur requirement

[1] Section 211(i) (4) mistakenly refers to exemptions under § 324 of the Act (''Vapor Recovery for Small Business Marketers of Petroleum Products''). While the proper reference is to § 325, Congress clearly intended to refer to § 325, as shown by the language used in § 211(i)(4), and the United States Code citation used in § 806 of the Clean Air Act Amendments of 1990, Public Law No. 101–549. Section 806 of the Amendments, which added paragraph (i) to § 211 of the Act, used 42 U.S.C. 7625–1 as the United States Code designation for § 324. This is the proper designation for § 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

[2] The cloud point defines the temperature at which cloud or haze or wax crystals appears in the oil. Its purpose is to ensure a minimum temperature above which fuel lines and other engine parts are not plugged by solids that form in the fuel.

of 0.05% would generally prohibit using Jet-A and No. 1 *low sulfur* diesel fuel interchangeably.

Ice formation on the navigable waters during the winter months restricts fuel delivery to off-highway areas served by barge lines. Therefore, fuel is generally only delivered to these areas between the months of May and October. This further restricts the ability of fuel distributors in Alaska to supply multiple grades of petroleum products to these communities.

The only violations of national ambient air quality standards in Alaska have been for carbon monoxide (CO) and particulate matter (PM_{10}). CO violations have only been recorded in the State's two largest communities: Anchorage and Fairbanks. PM_{10} violations have only been recorded in two rural communities, Mendenhall Valley of Juneau and Eagle River, a community within the boundaries of Anchorage. The most recent PM_{10} inventories for these two communities show that these violations are largely the result of fugitive dust from paved and unpaved roads, and that motor vehicle exhaust is responsible for less than one percent of the overall PM_{10} being emitted within the borders of each of these areas.[3] Moreover, Eagle River has not had a violation of the PM_{10} standard since 1986 and plans to apply to EPA for redesignation to attainment for PM_{10}. Mendenhall Valley has initiated efforts for road paving to be implemented to control road dust. The sulfur content of diesel fuel is not expected to have a significant impact on ambient PM_{10} or CO levels in any of these areas because of the minimal contribution by motor vehicles to PM_{10} in these areas and the insignificant effect of diesel fuel sulfur content on CO emissions.

Finally, EPA recognizes that the primary purpose of reducing the sulfur content of diesel fuel is to reduce vehicle particulate emissions. Additional benefits cited in the final rule (55 FR 34120, August 21, 1990) include a reduction in sulfur dioxide (SO_2) emissions and the ability to use exhaust after-treatment devices on diesel fueled vehicles, which would result in some reduction of HC and CO exhaust emissions. Despite the possibility that the use of high-sulfur diesel fuel may cause plugging or increased particulate sulfate emissions in diesel vehicles equipped with trap systems or oxidation catalysts, any increase in sulfate particulate emissions would likely have an insignificant effect on ambient PM levels in Alaska since current motor vehicle contributions to PM_{10} emissions are minimal. Also, the lower sulfur requirement for motor vehicle diesel fuel will have no impact on the attainment prospects of Fairbanks and Anchorage with respect to CO, since reducing sulfur content has no direct affect on CO emissions. Since Alaska is in attainment with ozone and SO_2 air quality standards, there is currently no concern for reducing HC or SO_2 emissions.

The Agency recognizes that granting this extension to the temporary exemption means Alaska will forego the potential benefits to its air quality resulting from the use of low-sulfur diesel fuel. However, the Agency believes that the potential benefits to Alaska's air quality are minimal and far outweighed by the increased costs resulting from factors unique to Alaska, at this time, to communities served by the FAHS.

C. Economic Factors

In complying with the section 211(i) sulfur requirement, refiners have the option to invest in the process modifications necessary to produce low-sulfur diesel fuel for use in motor vehicles, or not invest in the process modifications and only supply diesel fuel for off-highway purposes (e.g., heating, generation of electricity, fuel for non-road vehicles). Most of Alaska's refiners indicated that local refineries would choose to exit the market for highway diesel fuel if an exemption from the low sulfur requirement is not granted, because of limited refining capabilities, the small size of the market for highway diesel fuel in Alaska, and the costs that would be incurred to produce low-sulfur diesel fuel.

Demand for Jet-A kerosene, which is also sold as No. 1 diesel fuel because it meets Alaska's winter cloud point specification, accounts for almost fifty percent (50%) of Alaska's distillate consumption and dominates refiner planning. A survey of the refiners in Alaska, conducted by the State, revealed that it would cost over $100,000,000 in construction and process modifications to refine Alaska North Slope (ANS) crude into 0.05% sulfur diesel fuel to meet the demand for highway diesel fuel. Among the reasons for the high cost include the construction costs in Alaska, which are 25% to 65% higher than costs in the lower 48 states, and the cost of modifying the fuel production process itself. The petition states that because there is such a small demand for highway diesel fuel in Alaska, the costs that would be incurred to comply with section 211(i)'s sulfur requirement are excessive in light of the expected benefits. Without an exemption from having to meet this requirement, most refiners would choose to exit the market for highway diesel fuel.

Whether low-sulfur diesel fuel is produced in Alaska or imported from the lower 48 states or Canada, there remains the problem of segregating the two fuels for transport to communities accessible only by navigable waterways and storage of the fuels thereafter. Fuel is delivered to these communities only between the months of May and October due to ice formation which blocks waterways leading to these communities for much of the remainder of the year. The fuel supplied to these communities during the summer months must last through the winter and spring months until resupply can occur. Additionally, the existing fuel storage facilities limit the number of fuel types that can be stored for use in these communities. The cost of constructing separate storage facilities and providing separate tanks for transport of low-sulfur diesel fuel is prohibitive. This is largely due to the high cost of construction in Alaska relative to the lower 48, and the constraints inherent in distributing fuel in Alaska. One alternative to constructing separate storage facilities is to supply only low-sulfur diesel fuel to these communities. However, the result would require use of the higher cost, low-sulfur diesel fuel for all diesel fuel needs. This would greatly increase the already high cost of living in these communities, since a large percentage of distillate consumption in these communities is for off-highway uses, such as operating diesel powered electrical generators.

D. Environmental Factors

Information provided to EPA by the State of Alaska indicates that refiners supply and distribute standard diesel fuel in the summer which has a sulfur content of approximately 0.3% by weight, and supply and distribute Jet-A fuel in the winter as an Arctic-grade diesel, which has a sulfur content between 0.065 and 0.11. Thus, the reported level of sulfur in motor vehicle diesel fuel used in Alaska is below the current ASTM sulfur specification which allows up to 0.5% (by weight). Therefore, in general, the impact of not requiring the low sulfur diesel fuel program in Alaska are not as significant as they would be if the fuel were to approach the ASTM allowable sulfur content level.

Although the State's largest communities, Fairbanks and Anchorage,

[3] "PM_{10} Emission Inventories for the Mendenhall Valley and Eagle River Areas," prepared for the U.S. Environmental Protection Agency, Region X, by Engineering-Science, February 1988.

are CO nonattainment areas, extending this exemption is not expected to have any significant impact on ambient CO levels because the sulfur content in diesel fuel does not significantly affect CO emissions. Two rural communities are designated nonattainment areas with respect to particulate matter (PM_{10}); however, motor vehicle exhaust is responsible for less than one percent of the overall PM_{10} being emitted within the borders of these two areas where fugitive dust is reported to be a problem. Thus, EPA believes that granting a 24-month extension to the current temporary exemption to communities served by the FAHS will not have a significant impact on the ability of any of these communities to meet the NAAQS.

V. Decision for Extending the Current Temporary Exemption

In this notice, the Agency is extending the temporary exemption for those areas in Alaska served by FAHS from the diesel fuel sulfur content requirement of 0.05% (by weight), for a period of 24 months from October 1, 1996, or until such time as a decision is made on the petition for a permanent exemption, whichever is shorter. For the same reasons, the Agency also extends the exemption for those areas in Alaska covered by the FAHS from those provisions of section 211(g)(2)[4] of the Act that prohibit the fueling of motor vehicles with high-sulfur diesel fuel. Sections 211(g) and 211(i) both restrict the use of high-sulfur motor vehicle diesel fuel. Therefore, areas in Alaska served by the Federal Aid Highway System are also exempt from the related 211(g)(2) provisions until such time as a decision has been made on the state's petition for a permanent exemption.

The basis for this decision is that compliance with this requirement is unreasonable during such time period because, at this time, it would continue to create a severe economic burden for refiners, distributors and consumers of diesel fuel in the State of Alaska. This economic burden is created by unique meteorological conditions in Alaska and a set of unique distillate product demands in the state. As a result of these conditions, during the term of this exemption, it is not mandated that low-sulfur diesel fuel be available for commercial use in Alaska. The Agency will make a final determination on the state's petition for a permanent exemption, as discussed below.

The EPA believes that a 24-month continuation of the current exemption for areas served by the Federal Aid Highway System from the diesel fuel sulfur content requirement is reasonable and appropriate so that the Agency can consider recent comments on the state's petition. A permanent exemption is not appropriate at this time because EPA has not yet verified all relevant information and comments submitted by other interested parties.

Alaska's most recent petition included a compilation of information, provided by a Task Force (in which an EPA representative participated) that was established after the first petition, to further evaluate the conditions as described in that petition. These conditions included: the availability of arctic-grade, low-sulfur diesel fuel from out-of-state refiners, the costs associated with importing the fuel, and the costs of storing and distributing the fuel to areas on the highway system. The conditions and factors that were identified in the initial petition were expanded upon in the task force review. At this time there is sufficient evidence to support granting an extension to the current exemption, however, the Agency believes there are several issues that merit further investigation prior to making a final decision to act on the state's request for a permanent exemption. These issues include: consideration of an alternative fuel standard or fuel, local environmental effects, manufacturer's emissions warranty and recall liability, and the potential for tightening future heavy-duty emission standards for model year 2004 engines.

The information which is summarized in this notice and other pertinent information is being investigated in more detail by the Agency, prior to issuing a decision on the States request for a permanent exemption.

The Agency will publish a separate notice in the Federal Register to take action on the state's petition for a permanent exemption.

VI. Public Participation

The Agency is publishing this action as a direct final rule because this action is only extending Alaska's current temporary exemption from the diesel fuel sulfur standards as established in section 211(i) of the Act. The Agency views the changes contained herein as non-controversial and based on outreach efforts with affected parties, EPA anticipates no adverse or critical comments.

Following the August 27, 1993 publication of EPA's proposed decision to grant the first exemption from the low sulfur diesel fuel requirements requested by Alaska, there was a thirty day comment period, during which interested parties could request a hearing or submit comments on the proposal. The Agency received no request for a hearing. Comments were received both in support of the proposal to grant the exemption and expressing concerns over the impact of granting the exemption. These comments were considered in the Agency's decision to grant the previous exemption. The Agency received Alaska's request for a permanent exemption for the FAHS areas in December of 1995. Since that time, the Agency has received comment on the petition from the Alaska Center for the Environment and the Engine Manufacturers of America. Although the Agency believes that the petition does support an extension of the current exemption, EPA believes the information in these comments and the possible tightening of heavy duty engine standards in 2004 necessitate further consideration before the Agency proposes a decision on Alaska's request for a permanent waiver.

This action will become effective October 3, 1996 unless the Agency receives adverse comments or a request for a public hearing by September 18, 1996. If EPA receives such comments or request for a public hearing, EPA will publish a timely notice in the Federal Register withdrawing this rule. In the event that adverse or critical comments are received, EPA is also publishing a Notice of Proposed Decision in a separate action today, which proposes the same exemption contained in this direct final decision. Any adverse comments received by the date listed above will be addressed in a subsequent final decision. That final decision will be based on the relevant portion of the revision that is noticed as a proposed decision in the Federal Register and that is identical to this direct final decision. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 3, 1996.

VII. Statutory Authority

Authority for the action in this document is in sections 211(i)(4) (42

[4] This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which they know or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). It would clearly be impossible to hold persons liable for misfueling with diesel fuel with a sulfur content higher than 0.05%, when such fuel is permitted to be sold or dispensed for use in motor vehicles. The proposed exemptions would include exemptions from this prohibition, but not include the prohibitions in § 211(g)(2) relating to the minimum cetane index or alternative aromatic levels.

U.S.C. 7545(i)(4)) and 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act, as amended.

VIII. Administrative Designation and Regulatory Analysis

Under Executive Order 12866,[5] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[6]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

IX. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal Agencies examine the impacts of their regulations on small entities. The act requires an Agency to prepare a regulatory flexibility analysis in conjunction with notice and comment rulemaking, unless the Agency head certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Today's action to extend the temporary exemption of the low sulfur diesel fuel requirements in the State of Alaska until October 1, 1998, or until such time as the Agency proposes to act on the states request for a permanent exemption, whichever period of time is shorter, will not result in any additional economic burden on any of the affected parties, including small entities involved in the oil industry, the automotive industry and the automotive service industry. EPA is not imposing any new requirements on regulated entities, but instead is continuing an exemption from a requirement which makes it less restrictive.

Therefore, the Administrator has determined that this direct final decision will not have a significant impact on a substantial number of small entities, and that a regulatory flexibility analysis is not necessary in connection with this decision.

X. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 544 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

XI. Submission to Congress and the General Accounting Office

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

XII. Unfunded Mandates Act

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

EPA has determined that this direct final rule imposes no new federal requirements and does not include any federal mandate with costs to the private sector or to state, local, or tribal governments. Therefore, the Administrator certifies that this direct final rule does not require a budgetary impact statement.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Diesel fuel, Motor vehicle pollution.

Dated: August 12, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–21078 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–P

[5] 58 FR 51736 (October 4, 1993)

[6] *Id.* at section 3(f)(1)–(4).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1336

RIN 0970–AB37

Native American Programs

AGENCY: Administration for Native Americans, Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: On September 30, 1992, the Congress passed the Older Americans Act Amendments of 1992 (Pub. L. 102–375), amending the Native American Programs Act of 1974. In accordance with these amendments, the Administration for Native Americans (ANA) is amending 45 CFR Part 1336 to incorporate an appeals procedure for ANA ineligible applications. This action affords the applicants in ANA grant program announcement areas the opportunity to appeal the rejection of an application based on a finding that either the applicant or the proposed activities are ineligible for funding. A successful appeal would lead to reconsideration of the application in the next cycle of grant proposals following the HHS Departmental Appeals Board's determination to uphold the appeal. It does not guarantee ANA approval for grant funding.

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT: R. Denise Rodriguez (202) 690–6265, Department of Health and Human Services, Administration for Children and Families, 200 Independence Avenue SW., Room 348–F, Washington, DC 20201–0001.

SUPPLEMENTARY INFORMATION:

I. Program Description

In 1974, the Native American Programs Act (the Act) was enacted as Title VIII of the Economic Opportunity Act of 1964, (Pub. L. 93–644) (42 U.S.C. 2991a *et seq.*) to promote the goal of social and economic self-sufficiency for

American Indians, Alaska Natives, and Native Hawaiians. The legislation was subsequently amended by the Older Americans Act Amendments of 1987 (Pub. L. 100–175), which extended eligibility to Native American Pacific Islanders (including American Samoan Natives), and the Indian Environmental Regulatory Enhancement Act of 1990 (Pub. L. 101–408) and the Indian Reorganization Act Amendments (Pub. L. 100–581). Most recently it was amended by the Older Americans Act Amendments of 1992 (Pub. L. 102–375); the Native American Languages Act of 1992 (Pub. L. 102–524); Technical Amendments to Certain Indian Statutes, 1992 (Pub. L. 102–497); and the Older Americans Act Technical Amendments of 1993 (Pub. L. 103–171).

Background

Financial assistance provided by ANA, under the Act, is designed to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through programs and projects that: (1) Advance locally developed social and economic development strategies (SEDS) and strengthen local governance capabilities as authorized by § 803(a); (2) preserve Native American languages authorized by § 803C; (3) improve the capability of the governing body of the Indian tribe to regulate environmental quality authorized by § 803(d); and (4) mitigate the environmental impacts to Indian lands due to Department of Defense activities. The funding for the mitigation of environmental impacts to Indian lands due to Department of Defense activities is authorized by § 8094A of the Department of Defense Appropriations Act, 1994 (Pub. L. 103–139), and § 8094A, the Department of Defense Appropriations Act, 1995 (Pub. L. 103–335). The Act also authorizes a Hawaiian Loan Program in § 803A. Under this program, ANA makes grants to the Office of Hawaiian Affairs of the State of Hawaii to support a revolving loan fund. Because of the unique nature of this program, an appeal is unlikely to arise under it, and for this reason ANA has not addressed the question of eligibility of organizations or activities under this program in the regulations.

II. Discussion of Final Rule

A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on April 21, 1995 (60 FR 19994). No comments were received. However, we have made changes to the final rule for the benefit of all parties concerned. We now identify the Departmental Appeals Board (DAB) as the body that is delegated the authority to review appeals instead of the Assistant Secretary for Children and Families as set forth in the NPRM. On reconsideration of the NPRM, we determined that it would be logical for the DAB to hear ANA grants eligibility determination appeals, since the DAB already handles appeals regarding various grant programs administered by the Department, including appeals of terminations, suspensions and denials of refunding under ANA grant programs pursuant to 45 CFR 1336.52(c)(2). Accordingly, the Assistant Secretary has delegated the appeals process to the DAB. The Assistant Secretary's delegation to the DAB strengthens the appeals process and affords administrative convenience, beneficial to all parties concerned. For purposes of clarification, we have revised our descriptions of eligible applicants as described below.

Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders were added under 45 CFR 1336.33(a)(1) to the list of organizations eligible for funding under the Social and Economic Development Strategies (SEDS) and Preservation and Enhancement of Native American Languages programs. This new category of organizations was added to make it clear that such organizations are eligible to apply for funding under these programs. These organizations would have qualified under the proposed categories, but the addition of this category will clearly establish the eligibility of such organizations. The final regulations include a separate listing at § 1336.33(a)(2) of eligible organizations for the Alaska-Specific Social and Economic Development Strategies (SEDS) Projects. These organizations were listed under the eligible organizations for the SEDS program. The separate listings are necessary because Alaskan organizations can elect to apply under either the SEDS competition or the Alaska-Specific Social and Economic Development Strategies Project. In the final rule, § 1336.33(a)(4), which was (a)(3) in the NPRM, we have added Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects and other tribal or village organizations or consortia of Indian tribes to the list of eligible organizations for the program on the improvement of the capability of tribal governing bodies to regulate environmental quality. We added these categories in recognition of the possibility that such organizations performed similar functions to the organizations listed in the NPRM.

The final rule establishes new procedures mandated by reauthorization legislation, the Older Americans Act Amendments of 1992 (Pub. L. 102–375, Title VIII, Subtitle C; ''Native American Programs Act Amendments of 1992''). The rule adds three new sections to 45 CFR Part 1336, Subpart C that lists the categories of eligible applicants and activities that are ineligible, § 1336.33, requirements for the notice of ineligibility, § 1336.34, and the procedures for appeal of such a determination, § 1336.35. Appeals will be governed by the Departmental Appeals Board regulations at 45 CFR Part 16, except as otherwise provided in these regulations.

A successful appeal under § 1336.35 would lead to reconsideration of the application in the next cycle of grant proposals. It does not guarantee ANA approval for grant funding. Furthermore, the decision that an application is deficient by ANA prior to competitive panel review for reasons other than applicant ineligibility or the ineligibility of proposed activities is not appealable under this section and in accordance with § 810(b) of the Act. The decision not to fund an application because it fails the competitive review panel also is not appealable under this section.

Section by Section Discussion of the Final Rule

In Subpart C, Part 1336, Native American Projects, we are including a new § 1336.33, ''Eligible applicants and proposed activities which are ineligible''. This section lists the categories of organizations which are eligible for four of the grant programs administered by ANA. An organization not within the categories specified for a program is not eligible to receive funding under that program.

The provision also lists activities which, based upon its experience in administering the program, ANA has declined to fund in the past. The Agency has found that these activities are by their nature of limited or no value in furthering the goals of the respective grant programs administered by ANA.

Paragraph (a)(1) lists categories of applicants eligible to apply for SEDS and Preservation and Enhancement of Native American Language grants. The categories are in accordance with Section 803(a) of the Native American Programs Act, as amended, and Section

803C, which provides that organizations eligible under Section 803(a) are also eligible for grants under the Native American languages program. The following are some examples of the eligible organizations listed in paragraph (a)(1): Federally recognized Indian Tribes; urban Indian Centers; consortia of Indian Tribes; Alaska Native villages as defined by the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia; public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands; public and nonprofit private agencies serving Native Hawaiians; and incorporated non-Federally recognized Tribes.

Applications from tribal components which are tribally-authorized divisions of a larger tribe must be approved by the governing body of the Tribe. This interpretation of the requirements of the Act reflects the legal principle that Indian Tribes possess inherent governmental power over all internal affairs. See for example, *Merrion* v. *Jicarilla Apache Tribe,* 455 U.S. 130 (1982) (Tribe has inherent power to impose severance tax on mining activities). Attributes of sovereign authority of tribes extends over both their members and territory, except where that authority has been withdrawn or modified by treaty or Federal statute. *Iowa Mutual Insurance Co.* v. *LaPlante,* 480 U.S. 9, 14 (1987). Tribes generally retain sovereignty by way of tribal self-government and control over other aspects of its internal affairs. *Brendale* v. *Confederated Tribes and Band of Yakima,* 109 S. Ct. 2994 (1989). When the eligibility requirements of § 803(a) are applied to such organizations it is appropriate to interpret the requirements in light of the principle that tribes have an inherent authority over their internal affairs and over their members. To do otherwise would undermine the ability of tribes to exercise that authority. It is also particularly important in such circumstances to have the support of the tribal government since the grant is intended to further the social and economic development of the tribe and its members.

ANA also has included in the final rule a requirement for its programs that ''[a]pplicants, other than tribes or Alaska Native Village governments, proposing a project benefiting Native Americans or Native Alaskans, or both, must provide assurance that its duly elected or appointed board of directors is representative of the community to be served.'' We believe this requirement is consistent with the NPRM which made it clear from the proposed list of eligible organizations that in order to be eligible an organization had to be in some way representative of a Native American community. The requirement for an assurance of the representativeness of the organizations's board is only an elaboration of the existing requirement.

The requirements of paragraph (a)(1) set forth ANA's interpretation of the eligibility requirements of § 803(a) of the Act. The Agency has removed 45 CFR 1336.30(a) which restated the language of the statute. Continued use of that provision in the regulations would have caused confusion. In addition, ANA has removed 45 CFR 1336.30(c) which provided that projects in American Samoa, Guam and the Northern Mariana Islands received funding under § 803 ''subject to the availability of funds.'' This provision was based upon a requirement in § 803(a) which was deleted in 1992 by Pub. L. 102–497. In accordance with these removals, the heading of § 1336.30 has been changed to ''Eligibility under sections 804 and 805 of the Native American Programs Act of 1974''.

Paragraph (a)(2) lists 5 categories of applicants eligible to apply for funds under the Alaska-Specific Social and Economic Development Strategies Project. As explained earlier, this separate listing contains organizations that were in the NPRM but separate listings are necessary because Alaskan organizations can elect to apply under either the SEDS competition or the Alaska-Specific Social and Economic Development Strategies Project.

Paragraph (a)(3), which was (a)(2) in the NPRM, lists 5 categories of applicants eligible to apply for funds provided by the Department of Defense (DoD) and ANA for the purpose of mitigating environmental impacts on Indian Lands related to DoD activities. This list was derived from the Environmental Mitigation Program Announcement as published in the Federal Register: Availability of Financial Assistance; (58 FR 69106; December 29, 1993). ANA does not interpret Section 810(b) of the Act as requiring that applicants under the DoD program have a right to appeal rulings of ineligibility; however the ANA has decided as a matter of policy to include this program under the regulations.

Paragraph (a)(4), which was (a)(3) in the NPRM, lists 5 categories of applicants eligible to apply for funds for the improvement of the capability of tribal governing bodies to regulate environmental quality. The eligible categories of organizations are: (1) Federally recognized Indian Tribes; (2) incorporated non-Federally recognized Indian Tribes; (3) consortia of Indian Tribes; (4) Alaska Native villages as defined by the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia; (5) Tribal governing bodies (Indian Reorganization Act (IRA) or traditional councils) as recognized by the Bureau of Indian Affairs. The list of 5 categories is derived from the program announcement: Availability of Financial Assistance for Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality (59 FR 16650, April 7, 1994).

The provisions being added to the regulations do not include a list of organizations eligible for grants authorized by § 805 of the Act, which authorizes grants for research, demonstration and pilot projects. Eligibility under § 805 is addressed in part under the revised 45 CFR 1336.30. ANA is not currently awarding grants under this provision, nor does it have plans to do so. If, at some point in the future, it does issue an announcement for funding under § 805, the Agency will provide additional guidance on eligibility under that provision. Applicants for funding under § 805 who wish to appeal the rejection of an application based on a finding that either the applicant or the proposed activities are ineligible for funding will be able to do so by submitting an appeal as provided for by 45 CFR 1336.35.

Paragraph (b) provides a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974. (It is impossible to list all activities that would be considered eligible.) With the exception of one activity, the purchase of real estate, which is prohibited by law, the remaining activities listed are derived from ANA's past experiences in managing grants and working with organizations, both public and private. Several examples of these are:

(a) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. Third party T/TA is not an eligible activity because ANA believes it is inefficient to fund organizations which would otherwise be able to apply directly to ANA for T/TA funding;

(b) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long-range development plan. ANA is not interested in funding ''wish

lists'' of business possibilities. This policy reflects ANA's belief that the limited amount of funds available to the Agency is better used to support activities which directly affect the well-being of the members of Native American communities;

(c) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs. This area is covered by other Federal programs and would result in a duplicative effort by ANA; and

(d) Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions. ANA funds are used for specific projects that become self-sustaining and not for the on-going administration of tribes or organizations. (However, in Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.) This exception has been added because grantees for Alaska-Specific SEDS Projects at the village government level are frequently village governments or organizations performing governmental functions on behalf of village governments. In many instances, such funding is necessary to ensure that villages develop the minimum governmental services necessary to support social and economic development.

In section 1336.34, Notice of ineligibility, we require that upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant, by certified letter, of the decision. The notice must include a statement of the legal and factual grounds for the finding concerning eligibility, a copy of these regulations, and the statement regarding how to appeal the decision.

In section 1336.35, ''Appeal of ineligibility'', we are establishing the procedures an applicant must follow when seeking to appeal the ANA Commissioner's determination that an applicant, or proposed activities, are rejected on grounds of ineligibility. This section describes the steps that apply when seeking such an appeal. In accordance with the Native Americans Programs Act, Section 810(b), the applicant may make an appeal to the Secretary for review of the determination of ineligibility. The Secretary has delegated this authority to the Assistant Secretary. The Assistant Secretary has delegated to the DAB the review of appeals made under section 810(b). Except as otherwise provided in these regulations, Appeals will be governed by the DAB regulations at 45 CFR Part 16. Under this section, the applicant has 30 days following receipt of ineligibility notification to appeal, in writing, the Commissioner's ruling. The appeal must clearly identify the issues. Under this section, the Commissioner shall have 45 days to respond to the applicant's submission and the applicant 20 days to respond to the Commissioner's submission to DAB. The individual presiding over the appeal may request the parties to submit additional information within a specified time period before closing the record in the appeal. The DAB will provide a final written decision within 30 days of the closing of the record, unless the Board determines for good reason that a decision cannot be issued within the time period and so notifies the parties. If a determination is made by the DAB that the applicant or application is eligible, as required by law, the eligibility will not take effect until the next cycle of grant proposals are considered by ANA.

III. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted 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.

The final rule amends the current rules to establish an appeal procedure authorized by the Older Americans Act Amendments of 1992. It adds three new sections to 45 CFR Part 1336 that list the categories of eligible applicants and ineligible activities, set forth requirements for the notice of ineligibility, and establish procedures on how to appeal determinations of ineligibility made by the Commissioner, ANA. The final rule also deletes existing provisions from the regulations that are no longer applicable or are rendered obsolete by this final rule. We estimate that these regulations will not result in significant additional costs to the Federal government or Native American programs.

Regulatory Flexibility Act of 1995

Consistent with the Regulatory Flexibility Act [5 U.S.C. Ch. 6], we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities,'' we prepare an analysis describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While this rule affects small entities, i.e., Alaskan Native villages and non-profit organizations, based on past experience with respect to other appeals under ANA, we expect the impact to be minimal. For this reason, the Assistant Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement contained in a proposed or final rule. This final rule does not contain any reporting or recordkeeping requirements, thus, no submission to OMB is required.

List of Subjects in 45 CFR Part 1336

Administrative practice and procedure, American Samoa, Appeals Grant programs—Indians, Grant programs—social programs, Guam, Indians, Native Hawaiians, Northern Mariana Islands, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Approved: July 23, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, 45 CFR Part 1336 is amended as follows:

SUBCHAPTER D—THE ADMINISTRATION FOR NATIVE AMERICANS, NATIVE AMERICAN PROGRAMS

PART 1336—NATIVE AMERICAN PROGRAMS

1. The authority citation for Part 1336 continues to read as follows:

Authority: 42 U.S.C. 2991 *et seq.*

2. Section 1336.30 is amended by removing paragraphs (a) and (c), removing the designation (b) from the remaining paragraph, and revising the section heading to read as follows:

§ 1336.30 Eligibility under sections 804 and 805 of the Native American Programs Act of 1974.

* * * * *

3. Three new sections, §§ 1336.33, 1336.34 and 1336.35, are added to read as follows:

§ 1336.33 Eligible applicants and proposed activities which are ineligible.

(a) Eligibility for the listed programs is restricted to the following specified categories of organizations. In addition, applications from tribal components which are tribally-authorized divisions of a larger tribe must be approved by the

governing body of the Tribe. If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served.

(1) Social and Economic Development Strategies (SEDS) and Preservation and Enhancement of Native American Languages:

(i) Federally recognized Indian Tribes;

(ii) Consortia of Indian Tribes;

(iii) Incorporated non-Federally recognized Tribes;

(iv) Incorporated nonprofit multi-purpose community-based Indian organizations;

(v) Urban Indian Centers;

(vi) National and regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

(vii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(viii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(ix) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

(x) Nonprofit Native organizations in Alaska with village specific projects;

(xi) Public and nonprofit private agencies serving Native Hawaiians;

(xii) Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States);

(xiii) Tribally Controlled Community Colleges Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders; and

(xiv) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional councils) as recognized by the Bureau of Indian Affairs.

(Statutory authority: Sections 803(a) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 b(a) and 42 U.S.C. 2991b–3)

(2) Alaska-Specific Social and Economic Development Strategies (SEDS) Projects:

(i) Federally recognized Indian Tribes in Alaska;

(ii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

(iii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(iv) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and

(v) Nonprofit Native organizations in Alaska with village specific projects.

(3) Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Tribes;

(iii) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act (IRA) or traditional councils) as recognized by the Bureau of Indian Affairs.

(iv) Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects; and

(v) Other tribal or village organizations or consortia of Indian Tribes. (Statutory authority: § 8094A of the Department of Defense Appropriations Act, 1994 (Public Law 103–139), § 8094A of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991h(b)).

(4) Improvement of the capability of tribal governing bodies to regulate environmental quality:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Indian tribes;

(iii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(iv) Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects;

(v) Other tribal or village organizations or consortia of Indian tribes: and

(vi) Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs. (Statutory authority: Sections 803(d) of the Native Americans Programs Act of 1974, as amended 42 U.S.C. 2991b(d).)

(b) The following is a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974:

(1) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable;

(2) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long-range development plan;

(3) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs;

(4) Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions; however, for Competitive Area 2, Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place;

(5) The conduct of activities which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development);

(6) Proposals from consortia of tribes that are not specific with regard to support from, and roles of member tribes. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member tribes also receive funding from ANA; and

(7) The purchase of real estate. (Statutory authority: Sections 803B of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b–2)

§ 1336.34 Notice of ineligibility.

(a) Upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant by certified letter of the decision.

(b) The letter must include the following:

(1) The legal and factual grounds for the Commissioner's finding concerning eligibility;

(2) A copy of the regulations in this part; and

(3) The following statement: This is the final decision of the Commissioner, Administration for Native Americans. It shall be the final decision of the Department unless, within 30 days after receiving this decision as provided in § 810(b) of the Native Americans Programs Act of 1974, as amended, and 45 CFR part 1336, you deliver or mail

(you should use registered or certified mail to establish the date) a written notice of appeal to the HHS Departmental Appeals Board, 200 Independence Avenue, S.W., Washington, D.C. 20201. You shall attach to the notice a copy of this decision and note that you intend an appeal. The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position. We are enclosing a copy of 45 CFR part 1336 which governs the conduct of appeals under § 810(b). For additional information on the appeals process see 45 CFR 1336.35. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

§ 1336.35 Appeal of ineligibility.

The following steps apply when seeking an appeal on a finding of ineligibility for funding:

(a) An applicant, which has had its application rejected either because it has been found ineligible or because the activities it proposes are ineligible for funding by the Commissioner of ANA, may appeal the Commissioner's ruling to the HHS Departmental Appeals Board, in writing, within 30 days following receipt of ineligibility notification.

(b) The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position.

(c) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the Departmental Appeals Board will notify the applicant by certified mail that the appeal has been received.

(d) The applicant's request for reconsideration will be reviewed by the Departmental Appeals Board in accordance with 45 CFR part 16, except as otherwise provided in this part.

(e) The Commissioner shall have 45 days to respond to the applicant's submission under paragraph (a) of this section.

(f) The applicant shall have 20 days to respond to the Commissioner's submission and the parties may be requested to submit additional information within a specified time period before closing the record in the appeal.

(g) The Departmental Appeals Board will review the record in the appeal and provide a final written decision within 30 days following the closing of the record, unless the Board determines for good reason that a decision cannot be issued within this time period and so notifies the parties.

(h) If the Departmental Appeals Board determines that the applicant is eligible or that the activities proposed by the applicant are eligible for funding, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration for Native Americans. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[FR Doc. 96–20982 Filed 8–16–96; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

46 CFR Part 153

Coast Guard

CFR Correction

In title 46 of the Code of Federal Regulations, parts 140 to 155, revised as of October 1, 1995, on page 171, § 153.1046 was inadvertently omitted. The omitted text should read as follows:

§ 153.1046 Sulfuric acid.

No person may liquefy frozen or congealed sulfuric acid other than by external tank heating coils.

BILLING CODE 1505-01-D

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC–93–17]

RIN 2125–AD14

Federal Motor Carrier Safety Regulations; Intermodal Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; extension of effective date.

SUMMARY: The FHWA announces the extension of the effective date of its final rule, published on December 29, 1994, implementing provisions of the Intermodal Safe Container Transportation Act of 1992. The rule was scheduled to take effect on September 1, 1996, but the FHWA believes that further extension of the effective date until January 2, 1997, is appropriate based on the inability, to date, of the educational and informational outreach program undertaken by the FHWA to reach many foreign shippers; a request from several Senators to delay the effective date of this rule pending consideration of legislation to amend the Act; and two petitions received earlier by the FHWA for exemptions and amendments to the rule, which are currently outstanding.

DATES: The effective date of the final rule published on December 29, 1994, at 59 FR 67544 has been extended to January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366–5763; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On December 29, 1994, the FHWA published a final rule (59 FR 67544) which implemented the Intermodal Safe Container Transportation Act of 1992 (the Act) (Pub. L. 102–548, 106 Stat. 3646, partly codified at 49 U.S.C. 5901–5907 (formerly 49 U.S.C. 501 and 508)). On August 10, 1995 (60 FR 40761), the FHWA extended the rule's effective date until September 1, 1996, to allow the intermodal transportation industry sufficient time to comply by means of electronic data interchange, and to allow the FHWA, the intermodal transportation industry, and other parties enough time to inform affected domestic and foreign entities of their responsibilities. In April and August of 1995, the FHWA received two petitions for exemptions and amendments to the rule. The FHWA delayed the international distribution of pamphlets about the rule and other related educational projects until resolution of the petitions. On March 29, 1996, the petitioners along with an industry coalition requested that the FHWA delay its decision on the petitions and later notified the agency that they would seek legislative action to amend the Act. On July 16, 1996, a bill to amend the Act was introduced by the Chairman of the Senate Committee on Commerce, Science, and Transportation with co-sponsorship of the Chairman and ranking minority member of the Subcommittee on Surface Transportation and Merchant Marine. The bill (S. 1957) would raise the jurisdictional weight threshold from 4,536 kilograms (10,000 pounds) to 13,154 kilograms (29,000 pounds); reduce or eliminate paperwork burdens; provide clarification concerning applicability, requirements, and terminology; and establish additional liabilities. On July 23, 1996, the

sponsors of S. 1957 sent a letter to the Secretary of Transportation requesting that the rule's September 1, 1996, effective date be extended. The Senators expressed concern that implementation as currently planned could have devastating consequences on intermodal transportation including delays and severe congestion at ports.

The FHWA believes a further extension is appropriate because the two petitions before the agency are not resolved, a significant number of foreign entities are not familiar with their responsibilities, and implementation of the rule prior to possible enactment of S. 1957 could disrupt both interstate and foreign commerce. In the event that the rule became effective on September 1 and S. 1957 later became law, the rule would have to be suspended once again until it could be amended in accordance with the new law. In view of the international reach of the Act and the difficulty of explaining United States laws and regulations to foreign shippers and their intermediaries, the FHWA has determined that a further extension of the rule's effective date is warranted in order to avoid the risk of confusion and disruption that would result from frequent regulatory changes.

The FHWA is therefore extending the effective date of the final rule until January 2, 1997.

Authority: 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; 49 CFR 1.48.

Issued on: August 8, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–21018 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–22–M

Proposed Rules

Federal Register
Vol. 61, No. 161
Monday, August 19, 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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 96–016–13]

Karnal Bunt; Clarification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; clarification.

SUMMARY: We are advising the public that the Department intends to propose revisions to the current Karnal bunt compensation regulations for the 1996–1997 crop year, and that publication in the Federal Register on August 2, 1996, of the current compensation provisions as part of a proposal to amend other aspects of regulations should not be interpreted to mean that the Department has made a decision on compensation.

DATES: The comment closing date for the proposed rule, Docket No. 96–016–10, remains September 3, 1996.

ADDRESSES: Please send an original and three copies of written comments to Docket No. 96–016–10, 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. 96–016–10. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: In a series of interim rules published in the Federal Register since March, 1996, we established a quarantine and regulations concerning Karnal bunt in the United States.

The interim rules were published on March 28, 1996 (61 FR 13649–13655, Docket No. 96–016–3), April 25, 1996 (61 FR 18233–18235, Docket No. 96–016–5), and July 5, 1996 (61 FR 35107–35109, Docket No. 96–016–6 and 61 FR 35102–35107, Docket No. 96–016–7). Public forums were held in Washington, DC, on July 17, 1996, in Kansas City, MO, on August 13, 1996, in Phoenix, AZ, on August 14, 1996, and in Imperial, CA, on August 15, 1996. A notice of a public forum on August 20, 1996, in Las Cruces, NM, was published in the Federal Register on August 13, 1996 (61 FR 41990–41991, Docket No. 96–016–12). On August 2, 1996, we published a proposed rule (61 FR 40354–40361, Docket No. 96–016–10) in which we proposed changes to certain of the Karnal bunt regulations. Written comments on the interim rules and the proposed rule are required to be received by September 3, 1996.

The Department is reviewing the issue of compensation under the proposed regulatory changes we published in the Federal Register on August 2, 1996. In that proposal, the current compensation provisions were republished with the proposed regulatory changes, which should not be interpreted to mean that the Department has made a decision on compensation for the 1996–1997 crop year. Additionally, there are no provisions in the current regulations for compensation for wheat for propagative purposes or straw. Also, the compensation provisions do not reflect the changed market conditions in the quarantined area as a result of Karnal bunt. The Department plans to publish a proposed rule on compensation for the 1996–1997 crop year as soon as possible after a decision is made on the final rule regarding the regulatory system for Karnal bunt. Comments are welcome on what you believe that proposal should contain, and should be directed as indicated under the heading **ADDRESSES**.

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

Done in Washington, DC, this 14th day of August 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–21068 Filed 8–16–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1270

RIN 2550–AA02

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Extension of public comment period for first notice of proposed rulemaking.

SUMMARY: On June 11, 1996 (61 FR 29592), the Office of Federal Housing Enterprise Oversight (OFHEO) published a notice of proposed rulemaking (NPR) entitled ''Risk-Based Capital,'' which proposes the methodology for identifying the benchmark loss experience. This NPR is a significant step in the process of developing a regulation to establish risk-based capital standards for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. OFHEO has been requested to extend the comment period. To ensure that the public has ample opportunity to participate in the rulemaking process by commenting on the issues involved in the NPR, today's notice extends the public comment period from September 9, 1996, through October 24, 1996.

DATES: The comment period is extended until October 24, 1996.

ADDRESSES: Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, N.W., Fourth Floor, Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: David J. Pearl, Director, Office of Research, Analysis and Capital Standards; or Gary L. Norton, Deputy General Counsel, Office of General Counsel, Office of Federal Housing

Enterprise Oversight, 1700 G Street, N.W., Fourth Floor, Washington, D.C. 20552, telephone (202) 414–3800 (not a toll-free number).

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 96–21016 Filed 8–16–96; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes. This proposal would require modification of the pitch uncoupling mechanism of both elevators. This proposal is prompted by reports of fatigue cracking of the pitch uncoupling mechanism and the torque tube of the elevator. Failure of the pitch uncoupling mechanism due to fatigue cracking could result in the uncommanded uncoupling of the elevators. The actions specified by the proposed AD are intended to prevent such fatigue cracking and subsequent uncommanded uncoupling of the elevators, which could result in reduced controllability of the airplane.

DATES: Comments must be received by September 27, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–140–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72 series airplanes. The DGAC advises that it has received reports indicating that fatigue cracks have been found at the junction of the center section of the pitch uncoupling mechanism of the elevators, and the torque tube that connects the operation of both elevators. Such fatigue cracking could cause failure of the elevator coupling mechanism, and result in the uncommanded uncoupling of the elevators. This condition, if not detected and corrected in a timely manner, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Avions de Transport Regional (ATR) has issued Service Bulletin ATR72–27–1044, dated March 5, 1996, which describes procedures for modifying the pitch uncoupling mechanism of the elevators. Among other actions, the modification involves replacing the aluminum flanges of the pitch uncoupling mechanism with steel flanges, and reidentifying the uncoupling mechanism with a new part number after modification. The replacement will prevent fatigue cracking of the pitch uncoupling mechanism and the torque tube of the elevators. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 96–019–028(B), dated January 17, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the elevator uncoupling mechanism. This action would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 51 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 55 work hours per airplane to accomplish the proposed

actions, and that the average labor rate is $60 per work hour. The required parts would be provided by the manufacturer at not cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $168,300, or $3,300 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 96–NM–140–AD.

Applicability: Model ATR72–101, –102, –201, –202, –211, and –212 series airplanes on which Modification 4495 or Aerospatiale Service Bulletin ATR 72–27–1044 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncoupling of the elevators due to failure of the elevator coupling mechanism and resultant reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs later: Modify the elevator uncoupling mechanism in accordance with Aerospatiale Service Bulletin ATR72–27–1044, dated March 5, 1996.

(b) As of the effective date of this AD, no person shall install a pitch uncoupling mechanism of the elevator, having the following part numbers, on any airplane:

S2738194100800
S2738194102895
S2738194102200
S2738194102400
S2738194102800
S2738194103200

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

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

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

Issued in Renton, Washington, on August 12, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–21010 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 331

[Docket No. 95N–0254]

RIN 0910–AA63

Labeling of Orally Ingested Over-the-Counter Drug Products Containing Calcium, Magnesium, and Potassium; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of proposed rulemaking that appeared in the Federal Register of April 22, 1996 (61 FR 17807). The document proposed to amend the general labeling provisions for over-the-counter (OTC) drug products intended for oral ingestion to require the content per dosage unit and warning labeling when the product contains certain levels of calcium, magnesium, or potassium. The document was published with some errors. This document corrects those errors.

DATES: Written comments by July 22, 1996. Written comments on the agency's economic impact determination by July 22, 1996. The agency is proposing that any final rule based on this proposal be effective 12 months after the date of its publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2304.

In FR Doc. 96–9734, appearing on page 17807 in the Federal Register of Monday, April 22, 1996, the following corrections are made:

1. On page 17808, in the third column, in the third full paragraph, in the seventh line, ''vitamin E'' is corrected to read ''vitamin A.''

2. On page 17809, in the first column, in the first full paragraph, in the second line, ''vitamin E'' is corrected to read ''vitamin A,'' and in the same

paragraph, beginning in the twelfth line, the two last sentences are removed and a new sentence is added to read ''Thus, for foods containing less than 20 mg of calcium or less than 8 mg of magnesium per serving, the content may be declared as zero or as less than 2 percent of the Daily Value, except that magnesium need not be declared unless a claim is made about the nutrient.''

3. On page 17809, in the first column, in the third full paragraph, in the eleventh line, after the word ''amount.'', the following sentence is added: ''In the Federal Register of December 21, 1995 (60 FR 66206), FDA published a proposal entitled 'Food Labeling: Nutrient Content Claims, General Principles; Health Claims, General Requirements and Other Specific Requirements for Individual Health Claims' that would revise this requirement. (See 60 FR 66206 at 66225.) Comments on the revision will be addressed in that rulemaking proceeding.''

Dated: July 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–21049 Filed 8–16–96; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5555–4]

State of Alaska Petition for Exemption from Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed decision.

SUMMARY: On March 14, 1994, EPA granted the State of Alaska a waiver from the requirements of EPA's low sulfur diesel fuel program, permanently exempting Alaska's remote areas and providing a temporary exemption for areas of Alaska served by the Federal Aid Highway System (FAHS). The exemption applied to certain requirments in setion 211 (i) and (g) of the Clean Air Act, as implemented in EPA's regulations. These exemptions were based on EPA's determination that it would be unreasonable to require persons in these areas to comply with the low sulfur diesel fuel requirements due to unique geographical, meteorological and economic factors for Alaska, as well as other significant local factors.

The temporary exemption for the areas of Alaska served by the FAHS will expire on October 1, 1996. On December 12, 1995, the Governor of Alaska petitioned EPA to permanently exempt the areas covered by the temporary exemption. In this action, EPA is proposing to extend the temporary exemption for an additional 24 months, but reserving a final decision on whether it should be permanent.

Based on the factors and conditions identified in Alaska's December 12, 1995 petition, a continuation of the exemption is warranted at least temporarily. However, EPA believes that recent comments submitted to the agency merit further investigation before making a final decision on a permanent exemption. EPA is therfore proposing to extend the temporary exemption unitl October 1, 1998, or until such time that a final decision is made on the permanent exemption, whichever is shorter.

In the final rules section of this Federal Register, EPA is issuing this exemption as a direct final decision without prior proposal, because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the proposed change is set forth in the direct final decision. If no adverse comments are received in response to the direct final decision, no further activity is contemplated in relation to this proposed decision. If EPA receives adverse comments, the direct final decision will be withdrawn and all public comments received will be addressed in a subsequent final decision based on this proposed decision. EPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed decision must be received by September 18, 1996.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–96–26, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, S.W., Washington, D.C. 20460. Documents related to this rule have been placed in the public docket and may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material. Those wishing to notify EPA of their intent to submit adverse comment or request an opportunity for a public hearing on this action should contact Paul N. Argyropoulos, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9004.

FOR FURTHER INFORMATION CONTACT:

Paul N. Argyropoulos, Environmental Protection Specialist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9004.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are refiners, marketers, distributors, retailers and wholesale purchaser-consumers of diesel fuel. Regulated entities would include the following:

Category	Examples of regulated entities
Industry	Petroleum refiners, distributors, marketers, retailers (service station owners and operators), wholesale purchaser-consumers (fleet managers who operate a refueling facility to refuel motor vehicles).
Citizens	Any owner or operator of a diesel motor vehicle.
Government	Federal facilities, including military bases, who operate a refueling facility to refuel motor vehicles.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine section 80.29 of the Code of Federal Regulations.

For additional information, see the direct final decision published in this Federal Register.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Diesel fuel, Motor vehicle pollution.

Dated: August 12, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–21079 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 070296D]

Reef Fish Fishery of the Gulf of Mexico; Amendment 12

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 12 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before October 3, 1996.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 12, which includes an environmental assessment and a regulatory impact review, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, phone: 813–228–2815; fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), requires that a Council-prepared amendment to a fishery management plan be submitted to NMFS for review and approval, disapproval, or partial disapproval.

Amendment 12 would reduce the minimum size limit for red snapper harvested in the commercial fishery from 15 inches (38.1 cm) to 14 inches (35.6 cm) and eliminate the scheduled, automatic increase to 16 inches (40.6 cm) for the commercial fishery in 1998; establish a minimum size limit of 28 inches (71.1 cm) fork length for banded rudderfish and lesser amberjack taken under the bag limits; establish a bag limit for banded rudderfish, greater amberjack, and lesser amberjack, combined, of one fish; and establish a 20-fish aggregate bag limit for reef fish species for which there is no other bag limit.

Based on a preliminary evaluation of Amendment 12, NMFS has disapproved the proposed size limit reduction and the future, automatic size increase for red snapper harvested in the commercial fishery, because NMFS determined that those measures were inconsistent with the Magnuson Act and the agency's policy of risk-averse decisionmaking.

Proposed regulations to implement the measures of Amendment 12 that were not disapproved based on the preliminary evaluations are scheduled to be published for public comment.

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

Dated: August 13, 1996.

Richard W. Surdi,

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

[FR Doc. 96–21013 Filed 8–13–96; 4:45 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 61, No. 161
Monday, August 19, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–056–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approved information collection extension; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of regulations under the Animal Welfare Act governing the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers.

DATES: Comments on this notice must be received by October 18, 1996 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 96–056–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 96–056–1. 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: For information on the regulations and standards governing the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers, contact Dr. Morley Cook, Acting Assistant Deputy Administrator, Regulatory Enforcement and Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737–1234, (301) 734–4981; or e-mail: MCook@aphis.usda.gov. For copies of more detailed information, contact Ms. Cheryl Jenkins, APHIS, Information Collection Coordinator, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Number: 0579–0093.

Expiration Date of Approval: December 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: Regulations and standards have been promulgated under the Animal Welfare Act (the Act) to ensure that animals intended for use in research facilities, for exhibition purposes, or for use as pets, are provided humane care and treatment. The humane treatment of animals during transportation in commerce is also assured. Sections 10, 11, 12, and 13 of the Act authorize and require certain recordkeeping requirements for regulated facilities which are further explained in 9 CFR part 3, subparts A and D of the regulations and standards.

The records provide the necessary data for reviewing and evaluating program compliance by regulated facilities, and provide a workable enforcement system to carry out the requirements of the Act, and the intent of Congress, on a practical daily basis without resorting to more detailed and stringent regulations and standards.

The above reporting and recordkeeping requirements do not mandate the use of any official government form.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .547 hours per response.

Respondents: Dealers, exhibitors, carriers, handlers, and research facilities.

Estimated Number of Respondents: 8,200.

Estimated Number of Responses per Respondent: 9.798.

Estimated Total Annual Burden on Respondents: 43,975 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection.

Done in Washington, DC, this 13th day of August 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–21072 Filed 8–16–96; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection in support of the regulations

governing the foreign donation of agricultural commodities under both the section 416(b) and the Food for Progress programs based on re-estimates.

DATES: Comments on this notice must be received by October 18, 1996, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Ira D. Branson, Director, Commodity Credit Corporation Program Support Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1031, Washington, DC 20250–1031, telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION:

Title: Foreign Donation of Agricultural Commodities.

OMB Number: 0551–0035.

Expiration Date of Approval: July 31, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Cooperating sponsors must agree to provide requested proposal documents and compliance and related reports until commodities and/or local currencies generated from the sale thereof are utilized. Documents are used to develop effective agreements and assure provisions/objectives are met. Respondents are generally U.S. private voluntary organizations, U.S. cooperatives, and foreign governments.

Estimate of Burden: The public reporting burden for these collections vary in direct relation to the number and type of agreements in addition to the type of reporting requested.

Respondents: U.S. private voluntary organizations, U.S. cooperatives, and foreign governments.

Estimated Number of Respondents: 33 per annum.

Estimated Number of Responses Per Respondent: 66 per annum.

Estimated Total Annual Burden of Respondents: 21,417 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Requests for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Ira D. Branson, Director, Commodity Credit Corporation Program Support Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1031, 1400 Independence Avenue, S.W., Washington, DC 20250–1031.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., August 9, 1996.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 96–21017 Filed 8–16–96; 8:45 am]

BILLING CODE 3410–05–M

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension for and revision to an information collection currently approved in support of the Cotton Loan Program Regulations issued under authority of the CCC Charter Act. Program changes mandated by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) and other administrative decisions obsolete several forms and result in a decrease in the number of burden hours for information collection under the cotton loan program.

DATES: Comments on this notice must be received on or before October 18, 1996 to be assured consideration.

ADDITIONAL INFORMATION: George A. Stickels, Agricultural Program Specialist, USDA-Farm Service Agency-Price Support Division, STOP 0512, P.O. Box 2415, Washington, DC 20013; telephone (202) 720–7935.

SUPPLEMENTARY INFORMATION:

Title: Cotton, 7 CFR Part 1427.

OMB Control Number: 0560–0074.

Expiration Date: January 31, 1998.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0074, as identified above, is needed to enable the Farm Service Agency (FSA) to effectively administer the regulation relating to all aspects of the cotton loan program.

FSA County Offices, independent Cotton Clerks, Cooperative Marketing Associations and Loan Servicing Agents use various manual and automated forms to collect information from cotton producers for purposes of administering the cotton loan program. The 1996 Act terminated authority to extend cotton loans for crop years 1996 through 2002. As a result, form ''CCC Cotton A2'' used for upland cotton voluntary loan extensions will become obsolete, effective April 1, 1997. Other administrative changes to the cotton loan program have already made obsolete form ''CCC–837'', used to give notice to move cotton; forms ''CCC–813'' and ''CCC–813–1'' respectively, used for release of cotton warehouse receipts; and form ''CCC–813–2'', used to provide a schedule of cotton redemptions. The aforementioned changes will significantly reduce the public reporting burden for cotton loan program participants, as shown in the following revised estimates:

Respondents: Cotton producers.

Estimated Number of Respondents: 200,000.

Estimated Average Time to Respond: 15 minutes.

Estimated Total Annual Responses: 513,255.

Estimated Number of Reports Filed per Person: 2.56.

Estimated Total Burden Hours: 128,318 hours.

Topics for comments include but are not limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to George A. Stickels, Program Specialist, USDA-Farm Service

Agency-Price Support Division, STOP 0512, P.O. Box 2415, Washington, DC 20013; telephone (202) 720–7935. Copies of the information collection may be obtained from George A. Stickels at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on August 12, 1996.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–21070 Filed 8–16–96; 8:45 am]

BILLING CODE 3410–05–P

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension for and revision to an information collection currently approved in support of the sugar program regulations. Provisions in the Federal Agriculture Improvement and Reform Act of 1996 have resulted in a decrease in burden hours for information collection under the sugar program.

DATES: Comments on this notice must be received on or before October 18, 1996, to be assured consideration.

ADDITIONAL INFORMATION: David Wolf, Agricultural Program Specialist, Price Support Division, Farm Service Agency, USDA, STOP 0512, P.O. Box 2415, Washington, D.C. 20013–2415; telephone (202) 720–4704.

SUPPLEMENTARY INFORMATION:

Title: Sugar Program, 7 CFR Part 1435.

OMB Control Number: 0560–0093.

Expiration Date: July 31, 1998.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0093, as identified above, is needed to enable FSA to effectively administer the regulations at 7 CFR 1435 relating to loans for sugar beets and sugarcane. The Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) eliminates the protection of sugar producers in the event of processor bankruptcy or other insolvency. Previous regulations allowed producers to file with CCC, form SU–3, Application for Benefit Payment, for nonpayment by a processor of producer benefits. The 1996 Act also eliminates the requirement that a processor making an application for loan, will make assurances to guarantee that the processor will pay the producers of sugar beets or sugarcane the maximum benefits under the sugar loan program. Previously, processors posting a bond or other financial assurance were required to file with CCC, either form SU–4, Surety Bond for Sugar Loan Program, SU–5, Claims Waiver, or SU–6, Agreement to Provide Adequate Financial Assurance. Accordingly, eliminating these forms will decrease burden hours.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 16 minutes per response.

Respondents: Sugar Processors and Producers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 120.

Estimated Total Annual Burden on Respondents: 65 hours.

Topics for comment include but are not limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to David Wolf, Program Specialist, Price Support Division, Farm Service Agency, USDA, STOP 0512, P.O. Box 2415, Washington, D.C. 20013–2415; telephone (202) 720–4704. Copies of the information collection may be obtained from David Wolf at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on August 12, 1996.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–21071 Filed 8–16–96; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held September 12, 1996, 10:30 a.m., Herbert C. Hoover Building, Room 1617M–2, 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Overview of export control regimes.
4. Update on Bureau of Export Administration initiatives.

Executive Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the materials should be forwarded two weeks prior to the meeting to the address below: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 13, 1996, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended,

that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call (202) 482–2583.

Dated: August 13, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96–20986 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DT–M

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held September 17, 1996, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

General Session

1. Opening remarks by the Chairman and introductions.
2. Presentation of public papers or comments.
3. Discussion on renewal of the Committee charter.
4. Update on status of Wassenaar Arrangement negotiations and plans for U.S. implementation.
5. Update on status of commercial satellite and ''hot section'' technology jurisdiction negotiations and on schedule for publication of the implementing regulations.
6. Report on Missile Technology Control Regime multilateral negotiations and changes under consideration.

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 22, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call (202) 482–2583.

Dated: August 13, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96–20985 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 833]

Expansion of Foreign-Trade Zone 50 Long Beach, CA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Board of Harbor Commissioners of the City of Long Beach, grantee of Foreign-Trade Zone 50, Long Beach, California, area, for authority to expand its general-purpose zone to include a site in San Bernardino, California, was filed by the Board on October 5, 1995 (FTZ Docket 60–95, 60 FR 53583, 10/16/95); and,

Whereas, notice inviting public comment was given in the Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 50 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 16th day of July 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–21062 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 835]

Grant of Authority; Establishment of a Foreign-Trade Zone, Sebring, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Sebring Airport Authority (the Grantee) has made application to the Board (FTZ Docket 2–95, 60 FR 7939, 2/10/95), requesting the establishment of a foreign-trade zone in Sebring, Florida, adjacent to the Port Manatee Customs port of entry; and,

Whereas, notice inviting public comment has been given in the Federal Register, and the Board adopts the

findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 215, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of July 1996.

Michael Kantor,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–21060 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 840]

Grant of Authority; Establishment of a Foreign-Trade Zone, Ocala, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Economic Development Council, Inc. (of Ocala/Marion County) (the Grantee), a Florida non-profit corporation, has made application to the Board (FTZ Docket 23–95, 60 FR 27077, 5/22/95), requesting the establishment of a foreign-trade zone at sites in Ocala and Marion County, Florida, at and adjacent to the Ocala Regional Airport, a Customs user fee airport; and,

Whereas, notice inviting public comment has been given in the Federal Register, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 217, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28, subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 7th day of August 1996.

Michael Kantor,

Secretary of Commerce, Chairman and Executive Officer.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–21061 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On June 8, 1995, the Department of Commerce (the Department) published the preliminary results of three concurrent administrative reviews of the antidumping duty order on certain fresh cut flowers from Colombia. These reviews cover a total of 348 producers and/or exporters of fresh cut flowers to the United States for at least one of the following periods: March 1, 1991 through February 29, 1992; March 1, 1992 through February 28, 1993; and March 1, 1993 through February 28, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have made certain changes for the final results. The review indicates the existence of dumping margins for certain firms during the review periods.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, J. David Dirstine, or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

APPLICABLE STATUTE AND REGULATIONS: The Department is conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1992, March 12, 1993, and March 4, 1994, the Department published notices in the Federal Register of ''Opportunity to Request Administrative Review'' (57 FR 7910, 58 FR 13583, and 59 FR 10368, respectively) of the antidumping duty order on certain fresh cut flowers from Colombia. On May 21, 1992, May 28, 1993, and May 2, 1994, in accordance with 19 CFR 353.22(c)(1994), we initiated administrative reviews of this order for more than 500 Colombian firms covering the periods March 1, 1991 through February 29, 1992 (the 5th review), March 1, 1992 through February 28, 1993 (the 6th review), and March 1, 1993 through February 28, 1994 (the 7th review), respectively (*see* 57 FR 21643, 58 FR 31010, and 59 FR 22579, respectively).

On June 8, 1995, we published a notice of Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent to Revoke Order (In Part) (Preliminary Results), wherein we invited interested parties to comment. *See* 60 FR 30270 (June 8, 1995). At the request of interested parties, we held a public hearing on September 8, 1995.

Although the Preliminary Results indicated that Cultivos Miramonte, Flores Aurora, the Funza Group, and Industrial Agricola were being considered for revocation, our recalculations for these final results indicate that these firms no longer meet our requirements of not selling the subject merchandise at less than fair value for a period of at least three years and that it is not likely that they will sell the subject merchandise at less than fair value in the future. *See* 19 CFR 353.25(a)(2). Therefore, we are no longer considering these firms for revocation.

A number of respondents have asked that we correct clerical errors contained in their responses. We have had a longstanding practice of correcting a respondent's clerical errors after the preliminary results only if we can assess

from information already on the record that an error has been made, that the error is obvious from the record, and that the correction is accurate. *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy: Final Results of Antidumping Duty Administrative Review,* 57 FR 8295, 8297 (March 9, 1992). In light of a recent decision of the United States Court of Appeals for the Federal Circuit (CAFC), we have reevaluated our policy for correcting clerical errors of respondents. *See NTN Bearing Corp.* v. *United States,* Slip Op. 94–1186 (Fed. Cir. 1995) *(NTN).*

In *NTN,* the CAFC ruled that the Department had abused its discretion by refusing to correct certain clerical errors, which the respondent brought to the Department's attention after the preliminary results of review. Specifically, the CAFC found that the application of our test for determining whether to correct clerical errors in *NTN* was unreasonable for the following reasons: (1) The requirement that the record disclose the error essentially precludes corrections of clerical errors made by a respondent; (2) draconian penalties are inappropriate for clerical errors because clerical errors are by their nature not errors in judgment but merely inadvertencies; (3) in NTN's case, a straightforward mathematical adjustment was all that was required, so correction of NTN's errors would neither have required beginning anew nor have delayed issuance of the final results of review.

As a result of the NTN decision, we are modifying our policy regarding the correction of alleged clerical errors. We will accept corrections of clerical errors under the following conditions: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. In the Analysis of Comments Received section of this notice, we have evaluated company-specific situations using the above criteria.

Scope of Review

Imports covered by these reviews are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

Although we initiated reviews on more than 500 firms, we have only reviewed a total of 348 firms for at least one of the three review periods. We initiated reviews for a large number of firms which could not be located in spite of our requests for assistance from diverse sources such as the Floral Trade Council (the FTC), Asocolflores, the American Embassy in Bogotá, and the U.S. Customs Service. Therefore, we were unable to conduct administrative reviews for these firms. We shall assess duties for those unlocatable firms that have not previously been reviewed at the ''all others'' rate of 3.10 percent. Assessment of duties, as well as cash deposits, on entries from firms which we were not able to locate but that had been previously reviewed will be collected at the most recent cash deposit rate applicable to them. The unlocatable firms are:

Achalay
Agricola Altiplano
Agricola de Occidente
Agricola del Monte
Agricola Megaflor Ltda.
Agrocaribu Ltd.
Agro de Narino
Agroindustrial Madonna, S.A.
Agroindustrias de Narino Ltda.
Agropecuaria la Marcela
Agropecuaria Mauricio
Agrocosas
Agrotabio Kent
Aguacarga
Alcala
Alstroflores Ltda.
Amoret
Andalucia
Ancas Ltda.
A.Q.
Arboles Azules Ltda.
Carcol Ltda.
Classic
Clavelez
Coexflor
Color Explosion
Consorcio Agroindustrial Columbiano S.A. ''CAICO''
Cota
Crest D'or
Crop S.A.
Cultivos Guameru
Cypress Valley
Degaflor
Del Monte
Del Tropico Ltda.
Disagro Ltda.
El Dorado
Elite Flowers
El Milaro
El Tambo
El Timbul Ltda.
Euroflora
Exoticas
Exotic Flowers
Exotico
Exportadora
F. Salazar
Ferson Trading
Flamingo Flowers
Flor y Color
Flores Abaco, S.A.
Flores Agromonte
Flores Ainsus
Flores Alcala Ltda.
Flores Calichana
Flores Cerezangos
Flores Corola
Flores de Guasca
Flores de Iztari
Flores de Memecon/Corinto
Flores de la Cuesta
Flores de la Hacienda
Flores de la Maria
Flores del Cielo Ltda.
Flores del Cortijo
Flores del Tambo
Flores el Talle Ltda.
Flores Flamingo Ltda.
Flores Fusu
Flores Gloria
Flores la Cabanuela
Flores la Pampa
Flores la Union/Santana
Flores Montecarlo
Flores Palimana
Flores Saint Valentine
Flores San Andres
Flores Santana
Flores Sausalito
Flores Sindamanoi
Flores Suasuque
Flores Tenerife Ltda.
Flores Urimaco
Flores Violette
Florexpo
Floricola
Florisol
Florpacifico
Flower Factory
Flowers of the World/Rosa
Four Seasons
Fracolsa
Fresh Flowers
Garden and Flowers, Ltda.
German Ocampo
Granja
Gypso Flowers
Hacienda La Embarrada
Hacienda Matute
Hana/Hisa Group
  Flores Hana Ichi de Colombia Ltda.
  Flores Tokai Hisa
Hernando Monroy
Hill Crest Gardens
Horticultura de la Sasan

Horticultura Montecarlo
Illusion Flowers
Indigo S.A.
Industria Santa Clara
Industrial Terwengel, Ltda.
Innovacion Andina, S.A.
Inversiones Bucarelia
Inversiones Maya, Ltda.
Inversiones Playa
Inversiones & Producciones Tecnicas
Inversiones Silma
Inversiones Sima
Jardin de Carolina
Jardines Choconta
Jardines Darpu
Jardines de Timana
Jardines Natalia Ltda.
Jardines Tocarema
J.M. Torres
Karla Flowers
Kingdom S.A.
La Colina
La Embairada
La Flores Ltda.
La Floresta
Laura Flowers
L.H.
Loma Linda
Loreana Flowers
M. Alejandra
Mauricio Uribe
Merastec
Morcoto
My Flowers Ltda.
Nasino
Olga Rincon
Otono
Pinar Guameru
Piracania
Prismaflor
Reme Salamanca
Rosa Bella
Rosales de Suba Ltda.
Rosas y Jardines
Rose
San Ernesto
San Valentine
Sarena
Select Pro
Shila
Solor Flores Ltda.
Starlight
Sunbelt Florals
Susca
The Rose
Tomino
Tropical Garden
Tropiflor
Villa Diana
Zipa Flowers

Best Information Available

Section 776(c) of the Act provides that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Department shall use best information otherwise available (BIA). In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is BIA.

For these final results of reviews, in cases where we have determined to use total BIA, we applied two tiers of BIA depending on whether the companies attempted to or refused to cooperate in these reviews. When a company refused to provide the information requested in the form required, or otherwise significantly impeded the Department's review, the Department assigned to that company first-tier BIA, which is the higher of (1) the highest rate found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value (LTFV) investigation or any prior administrative review; or (2) the highest calculated rate found in the specific period of review for any firm for the same class or kind of merchandise in the same country of origin. When a company has substantially cooperated with the Department's request for information but failed to provide the information required in a timely manner or in the form required, the Department assigned to that company second-tier BIA, which is the higher of either: (1) The highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in the specific review for the class or kind of merchandise for any firm from the same country of origin. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10907 (Feb. 28, 1995); *see also Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993).

Because a number of firms failed to respond to our requests for information, we have used the highest rate ever found in any segment of this proceeding to establish their margins. This rate, which was calculated for the Bojaca Group in the 5th administrative review, is 76.60 percent for all three administrative reviews. The firms to which we have applied first-tier BIA rates and the review periods for which these firms are receiving a BIA rate (as indicated in parentheses) are as follows:

Agricola Jicabal (5,6,7)
Agricola Malqui (5,6,7)
Agricola Monteflor Ltda. (7)
Agrobloom Ltda. (7)
Agrokoralia (5,6,7)
Bali Flowers (7)
Bloomshare Ltda. (7)
Bogota Flowers (5,6,7)
Ciba Geigy (5,6,7)
Claveles Tropicales de Colombia (7)
Colony International Farm (5,6,7)
Conflores Ltda. (5,6,7)
Cultivos el Lago (5,6,7)
Flora Bellisima (5,6,7)
Flores Alfaya (5,6,7)
Flores Arco Iris (5,6,7)
Flores Balu (7)
Flores Catalina (7)
Flores de Fragua (7)
Flores de la Pradera Ltda. (5,6,7)
Flores del Pradro (7)
Flores el Majui (7)
Flores Guaicata Ltda. (5,6,7)
Flores Magara (7)
Flores Naturales (7)
Flores Petaluma Ltda.(5,6,7)
Flores Rio Grande (7)
Flores Santa Lucia (5,6,7)
Flores Tejas Verdes (5,6,7)
Fribir Ltda. (7)
Groex S.A. (5,6)
Hacienda Susata (7)
Inpar (5,6,7)
Interflora Ltda. (5,6,7)
Inter Flores (7)
Internacional Flowers (7)
Invernavas (5,6,7)
Inversiones del Alto (7)
Inversiones Nativa Ltda. (5,6,7)
Jardin (5,6,7)
Jardines del Muna (5,6,7)
La Florida (5,6,7)
Naranjo Exportaciones e Importaciones (7)
Plantas Ornamentales de Colombia S.A. (7)
Rosas y Flores (5,6,7)
Rosicler Ltda. (5,6,7)
Sabana Flowers (5,6,7)
Sunset Farms (5,6,7)
Tempest Flowers (5,6,7)

At the time of our preliminary results of review, we determined that MG Consultores, Flores Canelon, Flores la Valvanera, Flores del Hato, Agroindustrial del Riofrio, Jardines de Chia, Queen's Flowers de Colombia, and Jardines Fredonia were sufficiently related to each other to warrant collapsing their sales and production information into the Queen's Flowers Group. *See* Preliminary Results at 30271. Based on information which we requested and received after the preliminary results, we have determined that twelve other firms (Flores Jayvana, Flores el Cacique, Flores Calima, Flores la Mana, Flores el Cipres, Flores el Roble, Flores del Bojaca, Flores el Tandil, Flores el Ajibe, Flores Atlas, Floranova, and Cultivos Generales) are also related to the members of the Queen's Flowers Group within the meaning of section 771(13) of the Act. We determine that the type and degree of relationship is so significant that there is the strong possibility of price manipulation among all 20 of these companies. See our response to Comment 26, below. Therefore, we are

assigning a single rate for all 20 companies for these final results. However, not all of the companies of this group responded to our questionnaire. Further, there exist serious deficiencies in the responses submitted by the group. *See* Department's Position regarding Comment 27, below. Therefore, we determine that the members of the Queen's Flowers Group have significantly impeded our reviews and have used as uncooperative, or first-tier, BIA the highest rate for any company for this same class or kind of merchandise from this or any prior segment of the proceeding.

One firm, Agricola Usatama, responded to our original questionnaire, but failed to respond to our requests for supplemental information. We determine that this company has not cooperated with our requests for information. Therefore, we have applied a first-tier BIA rate to this firm for the seventh review.

Although Santa Helena submitted a response to our supplemental questionnaire, this firm failed to provide information allowing us to correct serious deficiencies in its cost responses. Therefore, we were unable to use its cost data for comparison purposes. However, because this firm responded to all sections of our questionnaire and substantially cooperated with our request for information, we have applied a cooperative, or second-tier, BIA rate to sales made by this company.

We conducted verification of responses submitted by the Agrodex Group, Cultivos Miramonte, Floralex, Flores Aurora, Flores Depina, the Funza Group, Flores de la Vereda, Flores Juanambu, the Florex Group, the Guacatay Group, the HOSA Group, Industrial Agricola, the Santana Group, Senda Brava, and the Tinzuque Group. We encountered serious difficulties in attempting to verify the responses submitted by Flores de la Vereda and Floralex. With respect to Flores de la Vereda, we could not successfully verify completeness and accuracy of the sales data. With respect to Floralex, we were unable to verify the accuracy of the constructed value information submitted by this firm. Because Flores de la Vereda and Floralex submitted responses and have otherwise participated in all segments of the proceeding, we have determined that they both have substantially cooperated with our requests for information and applied a second-tier BIA rate to these firms for all three reviews.

Also, we are applying a second-tier BIA rate to sales made by Agricola de los Alisos, Colflores, Flores Estrella, Flores Mountgar, and Flor Colombia S.A., because these companies were unable to respond to our questionnaire. In *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part),* 59 FR 15159, 15173 (March 31, 1994) *(Fourth Review),* we stated:

> ''In choosing an appropriate BIA * * * we focused on the following factors and how they applied to the * * * companies at the time they received our questionnaires (in this case, March 4, 1992): the extent to which the companies continued to operate, including current production and export levels, the number of persons employed by the firms, the disposition of the companies' assets, the relationship of the companies to other exporters continuing in business, the current legal status of the bankruptcy, liquidation, or reorganization proceedings, and the potential for reorganization (including the likelihood that the companies would resume production and exports).''

The record shows that Agricola de los Alisos, Colflores, Flores Estrella, Flores Mountgar, and Flor Colombia S.A. are no longer in business. In accordance with the standards enunciated above, we have determined that these companies were unable to respond to our questionnaire and have assigned a second-tier BIA rate to these firms.

In certain situations, we found it necessary to use partial BIA for a number of firms to correct more limited response deficiencies. In a supplemental questionnaire, Flores de Aposentos reported aggregate carnation sales which the firm knew were destined to be sold to the United States through resellers. Because the company did not separately identify these sales in its questionnaire response as required by the questionnaire, thereby prohibiting us from calculating accurate margins, as BIA we applied the higher of the highest rate ever applicable to the company or the highest calculated rate in the same review to the particular sales involved.

In the case of Las Amalias, we found that, for certain U.S. sales transactions in the 5th period of review (POR), the firm had reported sales prices to a related importer instead of sales prices to the first unrelated U.S. customer as required by our questionnaire. This prohibits us from calculating margins in accordance with the Act, so, as BIA, we have applied the higher of the highest rate ever applicable to Las Amalias or the highest calculated rate in the same review to these particular transactions.

United States Price

Pursuant to section 777A of the Act, we determined that it was appropriate to average U.S. prices on a monthly basis in order: (1) to use actual price information that is often available only on a monthly basis, (2) to account for large sales volumes, and (3) to account for perishable product pricing practices. *See, e.g., Fourth Review* at 15160.

In calculating the U.S. price (USP), we used purchase price when sales were made to unrelated purchasers in the United States prior to the date of importation, or exporter's sales price (ESP) when sales were made to unrelated purchasers in the United States after the date of importation, both pursuant to section 772 of the Act.

We calculated purchase prices based on the packed price to the first unrelated purchaser in the United States. The terms of purchase price sales were either f.o.b. Bogotá or c.i.f. Miami. We made deductions, where appropriate, for foreign inland freight, air freight, brokerage and handling, U.S. customs duties, and return credits.

We calculated ESP for sales made on consignment or through a related affiliate based on the packed price to the first unrelated customer in the United States. We made adjustments, where appropriate, for foreign inland freight, brokerage and handling, air freight, box charges, credit expenses, returned merchandise credits, royalties, U.S. duty, and either commissions paid to unrelated U.S. consignees or U.S. selling expenses of related U.S. consignees.

Foreign Market Value

Section 773(a)(1) of the Act requires the Department to compare sales in the United States with viable home market sales of such or similar merchandise sold in the home market, or a third-country market, in the ordinary course of trade. Although some companies reported either viable home or third-country markets for sales of particular flower types, consistent with our discussion in the *Fourth Review* (at 15160–61), we have concluded that home market and third-country sales are not an appropriate basis for FMV. *See* our response to Comment 7, below.

Accordingly, in calculating FMV, we used constructed value as defined in section 773(e) of the Act for all companies. The constructed value represents the average per-flower cost for each type of flower during each review period, based on the costs incurred to produce that type of flower during each review period.

The Department used the materials, production, and general expenses reported by respondents. Because we have determined that both the home market and third countries are either not viable or do not provide an appropriate basis for FMV for all companies, we

used the U.S. market as a surrogate for determining the amount of general expenses to add to constructed value. This figure included U.S. selling expenses which were incurred by affiliated U.S. firms (*see* our response to comment 8, below). The per-unit average constructed value was based on the quantity of export quality flowers sold to the United States. We have considered non-export quality flowers (also called culls) produced in conjunction with export quality flowers to be similar to scrap in that the culls may or may not have recoverable value. Therefore, we offset revenue from the sales of culls against the cost of producing the export quality flowers. *See* our response to Comment 24, below.

For firms whose actual general expenses exceeded the statutory minimum of 10 percent of the cost of materials and fabrication, we used the actual general expenses to calculate constructed value pursuant to section 773(e)(1)(B)(i) of the Act. For firms whose actual general expenses were less than the statutory minimum of 10 percent of the cost of materials and fabrication, we used the statutory minimum of 10 percent. Because imputed credit was included in constructed value, we reduced the actual interest expense reported in the companies' financial statements to prevent double-counting.

Because all respondents reported actual profit less than eight percent of the sum of the cost of production and actual expenses, the Department used the eight-percent statutory minimum for profit pursuant to section 773(e)(1)(B)(ii) of the Act. We added U.S. packing to constructed value. Adjustments to constructed value were made for credit and indirect selling expenses.

According to the 1993 edition of *Doing Business in Colombia*, published by Price Waterhouse, there has been a change in the Colombian generally accepted accounting practices (GAAP), effective January 1, 1992. This change required firms to revalue certain financial statement accounts in order to reflect the effects of inflation experienced during each financial reporting period. As part of this revaluation, firms must restate their fixed asset accounts and their corresponding depreciation expense. We asked respondents to provide additional data to allow us to adjust their data to reflect this change in Colombian GAAP for our final results. Most of the companies provided this data. For companies that failed to provide this data, or that provided inadequate data, we made the adjustment to their response based on monthly inflation figures published by the Colombian government. *See* Memorandum from Michael Martin and William Jones to Richard Rimlinger (February 20, 1996).

Many of the responding companies reported an ''income'' offset that they claimed was created along with this revaluation. We disallowed this offset as it is a change in the firm's equity and not income that is actually realized. For further discussion of this matter, *see* our response to Comment 11, below. For companies that failed to provide this data, or that provided inadequate data, we made the adjustment to their response based on monthly inflation figures published by the Colombian government. *See* Memorandum from Michael Martin and William Jones to Richard Rimlinger (February 20, 1996).

Analysis of Comments Received

We invited interested parties to comment on our preliminary results and intent to revoke the order in part. We received case and rebuttal briefs from the FTC, petitioner in this proceeding, the Asociacion Colombiana de Exportadores de Flores (Asocolflores), an association of Colombian flower producers representing many of the respondents in this case, and various exporters and importers of fresh cut flowers from Colombia. On September 8, 1995, we held a public hearing.

General Issues Raised by the Floral Trade Council

Comment 1: The FTC argues that the Department should not revoke the order with respect to companies that are or may be reselling flowers grown by other producers. The FTC asserts that, although it argued in the 1990–91 review (fourth review) that revocation for the Flores Colombianas Group (FCG) was inappropriate because of the possibility of other growers routing their flowers through FCG, the Department disagreed and revoked FCG (*Fourth Review*). The FTC reiterates the Department's rationale in the *Fourth Review* that, because the group's purchases from other producers were an insignificant percentage of its total U.S. sales, FCG had consistently stated that its suppliers had no foreknowledge that the purchased flowers were destined for any specific export market, and the Department had no evidence that the company purchased flowers at below its suppliers' cost of production, revocation was appropriate. The FTC reminds the Department that the agency informed the public that, if it received information that FCG is serving as a conduit for other Colombian flower growers, it would take appropriate action, which could include reinstatement in the order and referral to the U.S. Customs fraud division.

The FTC contends that the Department's decision to revoke FCG in the *Fourth Review* established additional criteria for revocation and that the Department should apply the same criteria in the current reviews before making a decision to revoke any of the companies. The FTC argues that the Department's preliminary determination to revoke these companies was faulty because ''(1) there is no evidence that purchases from other producers are insignificant, and (2) there is no basis on which to conclude that suppliers neither knew or should have known the destination of their sales'' (*Floral Trade Council's Public Case Brief*, page 3, August 11, 1995). The FTC contends that Colombian growers often purchase flowers from other producers for export to the United States, and that, because the merchandise is not marked, there continues to be a danger that companies with dumping margins will route their flowers through companies with no margins. The FTC asks that the Department reconsider its reliance on the ''knowledge'' factor in determining whether revocation candidates are likely to become conduits for growers subject to the order. The FTC contends that the knowledge test is impractical and subject to manipulation, and suggests that, as a precondition for revocation, Colombian growers requesting revocation should certify that they will not ship flowers grown by other Colombian growers, on penalty of reinstatement in the order.

Asocolflores argues that there is no factual basis for the FTC to conclude that companies eligible for revocation would serve as conduits for other producers. Asocolflores requests that the Department take the same position as it did in the *Fourth Review*, and analyze the facts on record in determining whether there is any basis for the FTC's speculation. Asocolflores points out that some of the companies eligible for revocation did not even purchase flowers from other producers. For those companies that did purchase flowers from other producers, Asocolflores contends that the purchases were occasional and that the Department previously has recognized that such limited sales and purchases do not constitute evasion of the order. Finally, Asocolflores contends that the FTC has provided no valid basis for the Department to reconsider its longstanding practice requiring the producer to know or have reason to know that its sales are destined for the

United States before they are reported as U.S. sales.

Department's Position: Section 353.25(a)(2) of our regulations states that we may revoke an order in part if we conclude that (1) a producer or reseller has not sold subject merchandise at less than fair value for a period of at least three consecutive years; (2) it is not likely that the producer or reseller will sell the subject merchandise at less than fair value in the future; and (3) the producer or reseller agrees, in writing, to their immediate reinstatement in the order if we conclude, under 19 CFR 353.22(f), that they have sold the subject merchandise below FMV.

For these final results, after recalculating the margins for Cultivos Miramonte, Flores Aurora, the Funza Group, and Industrial Agricola, we determine that these firms are no longer eligible for revocation. In the cases of Cultivos Miramonte, Flores Aurora, and Industrial Agricola, there has not been a period of at least three consecutive years without sales at less than fair value. In the case of the Funza Group, there was a period of three consecutive years (1991–93) in which the firm did not sell subject merchandise at less than fair value (*i.e.*, the fourth, fifth, and sixth periods of review). However, the Group did have sales at less than fair value in the last period reviewed (*i.e.*, the seventh period of review) and, therefore, the Group has not demonstrated that it is not likely to sell subject merchandise at less than fair value in the future. Therefore, we are not revoking the order with respect to any firms.

Comment 2: The FTC argues that the Department overstated ESP prices by not deducting commissions paid to related U.S. consignees. The FTC contends that where commissions paid to related U.S. consignees reflect arm's-length commissions and are directly related to sales, the Department should deduct the commissions as direct selling expenses. In support of deducting these commissions, the FTC argues the following: (1) the language of section 772(e)(1) of the Act requires the Department to deduct both U.S. commissions and indirect selling expenses from ESP, whether or not the U.S. consignee is related to the exporter; (2) the rationale of *Timken Co.* v. *United States,* 630 F. Supp. 1327 (CIT 1986) (*Timken*), requires the Department to deduct related-party commissions; and (3) even under the assumption that commissions need not always be deducted under section 772(e)(1), commissions that are arm's length in nature and directly related to the sales must be deducted from ESP as circumstance-of-sale adjustments.

In its rebuttal brief, Asocolflores states that the FTC's arguments ignore the Department's practice in this case and in *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia,* 60 FR 6980 (February 6, 1995) (*Roses*), of deducting actual expenses rather than intracompany transfers. Asocolflores contends that the court cases and statutory provisions cited by the FTC in support of deducting commissions paid to related parties are irrelevant in this case because the Department collapsed the consignee and supplier and treated the two parties as a single entity for purposes of determining ESP. Asocolflores states that when a supplier pays a commission to a consignee which the Department has collapsed with the supplier, the payment is merely an intracompany transfer of funds and not an actual expense. Asocolflores contends that, by deducting only the selling and operating expenses incurred by the U.S. consignee, USP is calculated on the basis of the actual sales prices received from unrelated parties and the actual selling expenses incurred by all related entities. Asocolflores argues that, because the supplier pays the commission to the importer to cover the importer's indirect selling expenses and to provide a profit, deducting the related importer's commission from USP (instead of deducting the importer's selling expenses) would have the effect of deducting the importer's profit from ESP. Asocolflores contends that this would be unlawful according to the *Timken* decision, where the Court of International Trade (CIT) observed that the statute does not call for the deduction of profits in ESP calculations. Asocolflores alleges that the FTC has attempted to confuse the issue by requesting that commissions be deducted as a direct selling expense when found to be at arm's length. Further, Asocolflores contends that whether a commission is at arm's length has nothing to do with the commission being an actual expense incurred by the exporter.

Department's Position: We disagree with the FTC. For the final results, we have continued to treat commissions paid to related consignees as intracompany transfers.

Section 772(c) of the Act defines ESP as the ''the price at which the merchandise is sold or agreed to be sold in the United States, before or after the time of importation, *by or for the account of the exporter* * * *.'' (emphasis added). The statute defines ''exporter'' to include the producer and the related U.S. consignee (section 771(13) of the Act). We make appropriate deductions to the price at which the merchandise is sold in the United States to the first unrelated party to determine ''the net amount returned to the exporter.'' S. Rep. No. 16, 67th Cong., 1st Sess. at 12 (1921). Thus, we deduct the U.S. indirect selling expenses incurred by the related consignee as these are payments to unrelated third parties that affect the exporter's net return. However, payments from a producer to its related U.S. consignee at issue are intracompany transfers that compensate the related consignee for selling expenses incurred by the consignee in the United States. Because these selling expenses are already deducted under our current methodology, the deduction of the intracompany ''commission'' would result in double-counting. *See, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 60 FR 44009, 44010 (Aug. 24, 1995). Thus, we make no deductions for these payments pursuant to section 772(e)(1).

In addition, we disagree with the FTC that the rationale of *Timken* requires us to deduct related-party commissions. The *Timken* court held that the statutory deduction for commissions did not require us to also deduct the profit earned by a U.S. subsidiary. *See Timken* v. *United States,* 630 F. Supp. 1327, 1342 (CIT 1986). The *Timken* court did not state that we were required to deduct related-party commissions. Further, as stated in *Roses,* the difference between a ''commission'' paid to a related U.S. consignee and the related consignee's selling and operating expenses is equal to the related U.S. consignee's profit. As there is no statutory provision providing for the deduction of profits in ESP situations, we have made no deductions for these amounts. *See Roses* at 6993.

Finally, we disagree with the FTC that these intracompany transfers should be deducted as a circumstance-of-sale adjustment. As noted above, we already deduct that portion of the transfer price that represents selling expenses paid by the related U.S. consignee. The remaining portion—profit—does not qualify as a circumstance-of-sale adjustment.

Comment 3: The FTC asserts that failing verification is a basis for first-tier BIA and argues that the Department was too lenient by applying second-tier BIA to firms that failed verification. The FTC points out that Flores de la Vereda presented a revised questionnaire

response during verification that contained substantial changes to the data it had submitted originally. The FTC also notes that the Department found various errors in its verifications of Flores de la Vereda and Floralex.

Flores de la Vereda and Floralex, Colombian flower producers and respondents in this case, contend that, when determining which tier of BIA to apply, the Department's practice is to take into consideration whether a respondent willfully refuses to participate in an administrative review, or whether it attempts to cooperate but is unable to comply with every request during verification. They argue that discrepancies in the verification of Floralex do not suggest that the company tried to obstruct the verification or that it was uncooperative. These respondents also point out that cases to which the FTC refers do not support its assertion; therefore, they contend, the FTC's argument that Floralex should be assigned first-tier BIA is wrong.

Department's Position: We agree with the respondents. The Department took into consideration all deficiencies found at verification for Flores de la Vereda and Floralex. However, the fact that the questionnaire response was revised for one company and various errors were found for both companies does not give sufficient reason, in this instance, to assign first-tier BIA. In determining what to apply as BIA, our regulations provide that we may take into account whether a party refuses to provide requested information or in some way impedes the proceedings. *See* 19 CFR 353.37(b). First-tier BIA is applied when a company refuses to provide information requested, or significantly impedes the Department's proceedings. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France,* 60 FR 10900, 10907 (February 28, 1995). In past administrative reviews, it has been the Department's practice to apply second-tier BIA when a company has substantially cooperated with the Department's request for information. In this case, even though Flores de la Vereda and Floralex failed certain aspects of verification, the companies substantially cooperated with all of our requests for information. Therefore, we have applied second-tier BIA to these companies.

Comment 4: The FTC argues that the Department should calculate and deduct inventory carrying cost (ICC) from ESP for those respondents that did not provide such a calculation in their responses. In support of this argument, the FTC refers to *Roses,* in which the Department calculated an estimated ICC for respondents selling through related parties who did not report ICC. Based on this precedent, the FTC contends that the Department must calculate ICC for fresh cut flowers because they have a longer life span than roses.

Asocolflores states that the Department has never deducted ICC from ESP in this case, and contends that it would be inappropriate to do so now. Furthermore, Asocolflores contends that ICC ''generally'' is included in the reported imputed credit expenses because this amount is calculated from the date of shipment from Colombia to the date of receipt of payment. Asocolflores states that, to the extent ICC are not included in the imputed credit expenses, they are insignificant and would not affect margin calculations. Asocolflores also cites *Micron Technology, Inc.* v. *United States,* Slip Op. 95–107 at 16–17 (CIT June 12, 1995), arguing that, because the Department did not request that companies provide the inventory carrying period, it cannot apply an adverse assumption to fill in the information needed to calculate this expense.

Department's Position: We disagree with the FTC. For the final results, we have not calculated an ICC for ESP sales.

The Act does not contain a specific provision for deducting ICC from USP. Rather, we deduct ICC pursuant to section 772(e)(2) of the statute, which requires us to deduct from ESP ''expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise.'' The CAFC recently upheld our decision to deduct ICC pursuant to this provision of the statute. *See Torrington Co.* v. *United States,* 44 F.3d 1572, 1580 (Fed. Cir. 1995).

Because ICC are not found in the books of the respondents, we must look at what the financing cost would have been. Our practice in calculating ICC for ESP sales is to calculate the cost in two segments: (1) for the period during which the merchandise is held by the foreign manufacturer; and (2) for the period during which the merchandise is in transit or held by the U.S. affiliate. If we were to calculate and deduct ICC on ESP sales in this case, the methodology would need to be slightly different because there are two types of ESP transactions.

The first type of ESP transaction is where the foreign manufacturer sells the flowers through a related U.S. consignee. The second type is where the foreign manufacturer sells the flowers through an unrelated consignee. In the latter situation, we would not calculate and deduct ICC because: (1) Flowers are shipped immediately upon production; and (2) our imputed credit expense calculation accounts for financing costs associated with the period during which the merchandise is in transit and held by the unrelated U.S. consignee (*i.e.,* imputed credit covers the financing costs from the time the merchandise is shipped to the United States until the producer receives payment for the merchandise). Where the foreign manufacturer sells the flowers through a related U.S. consignee, our imputed credit expense calculations do not cover the period during which the merchandise is in transit and held by the U.S. consignee. On these transactions our calculation of imputed credit covers the financing costs for the period between shipment from the U.S. consignee to the first unrelated party and receipt of payment. Thus, in order to capture all the financing costs on ESP transactions where the foreign manufacturer sells the flowers through a related U.S. consignee, it may be appropriate to calculate ICC for the period during which the flowers are in transit and held by the U.S. consignee.

For purposes of calculating USP and FMV, section 777A of the Act allows the Department to disregard ''adjustments which are insignificant in relation to the price or value of the merchandise.'' For calculating FMV, our regulations define ''insignificant'' as having either an ad valorem effect of less than 0.33 percent of FMV for individual adjustments, or 1.0 percent of FMV for any group of adjustments. *See* 19 CFR 353.59(a) (1994). The regulations do not define ''insignificant'' for adjustments involving USP. Regarding section 777A, the CIT has held that ''the statute provides not only that Commerce is the appropriate authority to determine whether an adjustment is insignificant, but also that it is Commerce that has the discretion to determine whether or not to disregard an insignificant adjustment.'' *SKF USA Inc.* v. *United States,* 876 F. Supp. 275, 281 (CIT 1995).

For the preliminary results, we did not calculate an ICC for any respondent. Furthermore, we did not request the ICC information in our questionnaires. An estimate of respondents' inventory periods is available in the public report used in the *Roses* investigation. However, respondents claim that this public report overstates the inventory period for the subject merchandise in this case. Therefore, we could obtain accurate ICC information only by sending out supplemental

questionnaires to each individual company.

Based on the respondents' claim that any ICC adjustment would be insignificant, we ran tests to determine the relative importance of the ICC adjustment in this case. *See* Memorandum from Holly A. Kuga to Joe A. Spetrini (November 8, 1995). For the Agrodex Group and the Claveles Colombianos Group, we calculated a per-unit ICC, based on the number of days in inventory information in the public report used in *Roses*, and added this amount to each group's related importer's indirect selling expenses and deducted the sum from USP. These companies are two of the largest firms under review in total sales of subject flowers to the United States. In addition, the majority of their sales were made through a related U.S. consignee. The effect of the ICC adjustment on the companies' weighted-average margins during the 5th, 6th, and 7th reviews ranged from an increase of 0.00 percent to 0.11 percent. As a result of these tests, we conclude that the ICC adjustment is insignificant. Further, we conclude that use of this insignificant adjustment would be inappropriate in these reviews, given the burdens of obtaining the necessary information to make an accurate ICC calculation at this stage of the reviews.

Comment 5: The FTC argues that the Department should presume that respondents who withdrew their requests for revocation prior to verification would have failed verification. This action, the FTC contends, is a transparent attempt to avoid scrutiny by the Department. Therefore, in the FTC's view, the Department must assume that an audit of these firms' data would expose the inaccuracy of their responses. Therefore, the FTC asserts, the Department must assign a margin based on a first-tier BIA rate to sales by these firms.

Asocolflores counters the FTC's argument by claiming that there is no legal or factual basis for applying BIA to companies that withdraw requests for revocation. Asocolflores maintains that there were several reasons why respondents withdrew their requests for revocation: certain companies determined that they were no longer eligible for revocation after reviewing their responses; other companies could not afford the expense of undergoing verification; others were deterred by the uncertainty created when the Department issued questionnaires indicating it might use third-country profits in its margin analysis. Asocolflores argues that BIA can be used only when a company refuses or otherwise fails to provide information requested by the Department, or fails verification.

Department's Position: We disagree with FTC. A company will request revocation when it believes it will satisfy the requirements set forth in 19 CFR 353.25(a)(2). Conversely, a withdrawal of a request for revocation merely indicates that a company no longer believes the regulatory requirements will be satisfied. Because there is no record evidence indicating that companies that withdrew their request for revocation would have failed verification, we have no basis to assign these companies rates based on BIA.

Comment 6: The FTC contends that the Department should not assign the ''all others'' rate to companies that could not be located by the Department and that have been assigned higher company-specific margins in previous reviews.

Asocolflores agrees that companies with pre-existing rates should continue to receive those rates, whether they are lower or higher than the ''all others'' rate.

Department's Position: Pursuant to section 751(a) of the Act, the Department conducts administrative reviews of particular companies ''if a request for such a review has been received.'' If no request for review is received for a company, the Department ''will instruct the Customs Service to assess antidumping duties * * * at rates equal to the cash deposit of, or bond for, estimated antidumping duties. * * *'' 19 CFR 353.22(e) (1994). In other words, ''in cases where a company makes cash deposits on entries of merchandise subject to antidumping duties, and no administrative review of those entries is requested, the cash deposit rate automatically becomes that company's assessment rate for those entries.'' *Federal-Mogul Corp.* v. *United States*, 822 F. Supp. 782, 787–88 (CIT 1993). In this case, an administrative review was requested for the unlocatable firms in question. However, because we were unable to review these firms, the results are the same as if no review had been requested for these firms. Therefore, for the final results, unlocatable companies with pre-existing rates will be assessed at those rates. The cash deposit rates for these companies will remain the same.

Comment 7: The FTC argues that, because the Department did not collect current third-country price data, its decision to reject third-country sales as the basis for FMV is flawed. The FTC claims that the Department based its decision in these reviews on data collected in a past review, and that the records in these reviews suggest that the facts and circumstances of third-country sales have changed. The FTC contends that, because the Department neither collected nor analyzed third-country sales prices, its conclusions are unsubstantiated.

The FTC claims that the analysis in the Department's notice of preliminary results is flawed. The FTC claims that the Department's position that the market patterns in third-country and U.S. markets are different is not supported by evidence on the record. Also, the FTC argues that the Department's focus on differences in holidays is misplaced in that a comparison of U.S. prices during a major holiday period to prices in a third country would be to respondents' advantage, because prices in the United States during peak flower-giving holidays are relatively greater than during non-peak periods, which is when the FTC contends dumping is occurring. Therefore, the FTC concludes that, in comparing third-country markets to the U.S. market, the only relevant inquiry is whether there are foreign holidays where price levels peak in foreign markets at a time when there is no comparable U.S. holiday. The FTC states that, without the relevant transaction data on the record, there is no basis on which to test this concern. The FTC also contends that, in any case, U.S. holidays and third-country holidays mostly do coincide, and it cites a list of holidays it attached to its February 18, 1994 submission in support of this contention.

With respect to the Department's preliminary decision that there are differences in market patterns, the FTC argues that flower producers in third countries do not face the same competitive pricing pressure that flower producers in the United States do, and the differences in price volatility can be attributed in no small part to the pricing practices of Colombian flower producers, which, according to the FTC, control roughly two-thirds of the U.S. market. The FTC also argues that the notion that U.S. customers only purchase flowers during special occasions is belied by import statistics generated by the Department, and that U.S. customers buy flowers throughout the year, not just on special occasions.

The FTC objects to the Department's consideration of price correlation on the grounds that rejecting third-country sales because they do not follow the same patterns as in the U.S. market undermines the purpose of the antidumping law. The FTC contends that in any case where dumping exists, there will be a negative correlation in

prices between the U.S. and the foreign markets. The FTC concludes by stating that the Department's resort to CV does not comport with its consideration of the lack of price correlation because no correlation between constructed value and the U.S. market will necessarily exist.

Asocolflores argues that the circumstances in third-country markets have not changed to such a degree to warrant reversing prior practice in this case, and that, although the Department did not collect sales data, the Department did collect other data which it used in reaching its conclusions. Specifically, Asocolflores states that the FTC itself has provided pricing information demonstrating that prices in the United States and third countries lacked correlation, peaked at different times, and were more stable in third countries during the PORs.

Asocolflores claims that the FTC has provided no new legal analysis or factual information beyond what has previously been submitted and rejected by both the Department and the CIT. Asocolflores also takes issue with the FTC's argument that the Department's focus on U.S. holidays is misplaced. Asocolflores argues that the Department properly focused not just on U.S. holidays or just foreign holidays, but rather on the differences in U.S. and foreign flower-giving holidays and the consequent distortion that may result when a peak period in one market is compared to a non-peak period in a different market. Asocolflores further contends that the FTC's list of holidays is meaningless, because the FTC has not limited its list to flower-giving holidays; rather it has listed all holidays in both markets.

Asocolflores claims that, while the FTC urges the Department not to focus exclusively on pricing trends or market patterns, it is precisely these factors which compelled the Department to reject third-country sales as a basis of FMV in the previous reviews. Asocolflores contends that, in light of the above arguments, there is not a basis for reversing an established case precedent upheld by the CIT.

Department's Position: For purposes of these final results, we have continued to base FMV on constructed value because we remain convinced that third-country sales would be an inappropriate basis for FMV.

Section 773(a)(2) of the Act allows the Department to base FMV on constructed value where FMV ''cannot be determined'' using home market or third-country sales. Where, as here, home market sales are inadequate to serve as a basis for foreign market value, section 353.48(b) of our regulations states a preference for use of third-country sales over constructed value ''if adequate information is available and can be verified.''

We have used constructed value for Colombian flowers since the second administrative review of this proceeding. We did this for three reasons. First, we determined that prices in third-country markets were negatively correlated to prices in the United States. We determined that this negative correlation was caused by a variety of factors, including the greater volatility and sporadic nature of the U.S. market, differing peak price periods (holidays), and Colombian producers' relative lack of access to European markets. Second, because of the relative lack of access to European markets, Colombian producers generally sold to Europe only during peak months. Third, because the merchandise in question is highly perishable, most producers were found to plan the vast majority of their production for sale to the U.S. market, and generally sold excess production to markets that they may not have planned to sell in. This created a ''chance element'' that could cause price differences that were unrelated to dumping. *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review*, 55 FR 20491, 20492 (May 17, 1990) (*Second Review*). This decision was subsequently upheld by the CIT. *See Floral Trade Council* v. *United States*, 775 F. Supp. 1492, 1495–98 (CIT 1991).

We disagree with the FTC's argument that we cannot decide this matter based on the existing record. We also disagree with petitioners that we were required to collect actual third-country sales data prior to our decision to reject third-country prices. While we did not collect third-country sales data from respondents, we did collect information about third-country markets. We received narrative responses to questions regarding third-country markets, ranging from general questions about market conditions to questions about specific companies' practices, experiences, and average profit levels. We also received price data for standard carnations for 1991 from the FTC for the United States and for the Aalsmeer market in Europe. The record shows no change in the differences in market volatilities, no change in the differences in holidays, and no change in the differences in end-use of the merchandise. Based on the information we collected for these PORs, we determine that the differences in prevailing market conditions between European markets, which comprise the primary third-country markets, and the United States in these PORs are still too great to justify use of third-country prices.

We find that there is still great price volatility in the United States which does not exist in third-country markets. We find that significant differences in the demand patterns between the markets continue to exist, which are explained largely by the differences in holidays and end-uses of subject merchandise.

We find that the differences in volatility between third-country markets and the United States are largely attributable to differences in demand patterns. We have observed that demand and prices in the United States fluctuate much more widely than in European markets, and that demand and prices correlate strongly in the United States. That is, prices and demand are both high at the same time and are both low at the same time. This indicates that, in the United States, supply moves to meet demand, rather than the other way around. In a demand-driven market, the quantities supplied move to meet demand, which explains why prices and quantities are both high at certain times and why both are low at other times. By contrast, in a supply- driven market, lower prices would lead to greater quantities purchased by consumers, and higher prices would cause fewer products purchased. There is no evidence of low prices coinciding with high demand or high sales quantities, or vice versa. Therefore, we infer that the United States is largely a demand-driven market. We conclude that demand exerts a considerably stronger influence on prices in the U.S. market than in Europe.

With regard to holidays, we observe that differences in holidays are not in and of themselves a reason for rejecting third-country sales, but are a significant factor in explaining why there is no apparent correlation between prices in third-country markets and the United States. Further, we are not convinced by the FTC's claims that flower-buying holidays in third-country markets and the United States largely coincide. For example, the FTC argues that All Souls' Day, a European flower-buying holiday, coincides with Halloween. This is true, but because Halloween is not a holiday for which people in the United States typically purchase flowers, observing that the two holidays coincide does not demonstrate that third-country and U.S. flower-buying holidays coincide.

The FTC is correct that flowers are bought throughout the year in the United States and not just on special

occasions. We do not conclude otherwise. The fact remains, however, that there are certain flower-buying holidays, such as Valentine's Day and Mother's Day, for which demand for subject merchandise increases markedly. In contrast, third-country market customers more often buy flowers for everyday use, such as decoration. *See, e.g.*, Cienfuegos Group section A response (May 16, 1994), Flores de la Sabana S.A. supplemental response (April 15, 1994), Flores Tiba S.A. section A response (May 16, 1994), and HOSA Group section A response (May 16, 1994). This was true when we originally decided that third-country prices were an inappropriate basis for FMV and was a factor we cited in that review in our decision. *See Second Review* at 20492. From this, we conclude that, for the most part, the end-use of subject merchandise significantly differs between the United States and third-country markets.

The FTC, in its February 18, 1994 submission, provided third-country market price data which, according to the FTC, demonstrated that the correlation between prices in third-country markets and the United States was sufficiently strong to justify reversing our decision. We examined the price data submitted by the FTC covering 1991 and found that third-country and U.S. prices moved in opposite directions in approximately half of the months of the year. This indicates that there is neither a strong positive nor negative correlation between prices in the United States and third-country markets. Our analysis of correlation is inconclusive and, therefore, we turned to other factors in our analysis, which are described above.

Finally, we disagree with the FTC's statement that there will be negative price correlations wherever dumping occurs. Dumping can exist in any situation regardless of price correlation. For example, USP and FMV could move together, *i.e.*, be perfectly correlated, and there would still be dumping as long as FMV was consistently greater than USP.

While we do find that, since our determination in the *Second Review*, Colombian producers have gained greater access to third-country markets and our analysis of the correlation between U.S. and third-country prices during the PORs was inconclusive, none of the other factors that affected our decision, including those that explain the lack of an apparent correlation of prices, has changed significantly enough to warrant our abandoning CV as the basis for FMV.

Comment 8: The FTC argues that, if the Department chooses not to use third-country sales as the basis of FMV, it should use actual third-country profits and general expenses in calculating CV. The FTC contends that CV is intended as a substitute for a price-based FMV, and the profit and general expenses used in calculating CV should be equal to the profit and general expenses on those prices that are the basis for FMV. The FTC observes that the Department collected and verified third-country profit data, and that using the statutory minimum does not reflect the price discrimination that exists between markets. The FTC argues that the requirements for using profit on third-country sales are met in this case, citing *Aramid Fiber Formed of Poly-Phenylene Terephthaliamide from the Netherlands*, 59 FR 23684, 23686 (1994), as an example of a case in which the Department calculated profits on the basis of third-country sales.

Asocolflores argues that using third-country profit and general expenses for the purposes of CV would effectively create a surrogate for third-country sales. Asocolflores contends that the Department has recognized this principle and rejected the same argument in *Roses* at 6994, stating that, ''where there was a viable, but dissimilar third-country market, [the Department] used U.S. surrogates and the statutory eight percent profit because [it has] determined that third-country markets do not provide an appropriate basis for foreign market value.''

Asocolflores argues that many of the same objections to the use of third-country sales apply to the use of third-country profit. For example, Asocolflores notes, because prices in the U.S. and third-country markets are incomparable due to timing and volatility differences, the profit margins will not be comparable. Asocolflores also notes that, because sales in third-country markets are not made in all months, peak periods are not balanced by off-peak periods. Moreover, Asocolflores contends, using third-country profits in an annual CV is further distortive because it is being used as a comparison to monthly-averaged USPs. Asocolflores argues that the FMV that the FTC would have the Deparment create is not representative of prices in any market because it would combine a general cost of production with U.S. selling expenses, U.S. imputed credit expenses, third-country general expenses, and third-country profits.

Finally, Asocolflores concludes that using third-country profits would violate established case precedent. Respondents assert that they have relied upon this methodology and the Department cannot now change its methodologies without compelling reasons, citing *Shikoku Chemicals Corp.* v. *United States*, 795 F. Supp. 417, 421 (CIT 1992).

Department's Position: We disagree with petitioner. Section 773(e)(1) of the Act states that CV shall include ''an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual commercial quantities and in the ordinary course of trade . . .'' Section 353.50(a) of our regulations elaborates on this requirement by noting that CV will include general expenses and profit ''usually reflected in sales of merchandise by producers in the home market country * * *''

In this case, we are not using home market prices for FMV because home market flower sales are either not viable or outside the ordinary course of trade. *See, e.g., Second Review* at 20492. We are not using third-country prices for FMV because, as discussed in our response to Comment 7, an unusual fact pattern applies in this case which would cause comparisons to third-country prices to be distortive.

Because we rejected the prices of the home market and third countries for purposes of FMV, we find it necessary to reject the general expenses and profits associated with these sales. Just as home market and third-country prices will not provide an accurate measurement of dumping in this case, the general expenses and profit associated with these sales are not of the amount ''usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration.'' Thus, we decline to use these amounts for purposes of CV.

We disagree with the FTC that our position in *Aramid Fiber* compels us to use third-country selling expenses and profit in this case. *Aramid Fiber* used viable third-country markets as a basis for FMV. *See Aramid Fiber* at 23685. Here, we are unable to use third-country sales as the basis of FMV.

For the final results, then, we have used the eight-percent statutory minimum profit. *See Alhambra Foundry Co., Ltd.* v. *United States*, 685 F. Supp. 1252, 1259–60 (CIT 1988) (upholding use of statutory eight-percent minimum profit where no viable home market or third country market exists). In our preliminary results, we stated that we used respondents' actual profit for

merchandise of the same general class or kind where this amount was greater than the statutory minimum. However, for these final results, we determine that there are no cases in which a respondent's home market profit exceeded eight percent. Therefore, use of the statutory minimum profit is appropriate.

For general expenses, it is the Department's practice to use U.S. selling expenses as a surrogate when home market and third-country market sales form an inappropriate basis for FMV. *See Final Determination of Sales at Less Than Fair Value: Tubeless Steel Disc Wheels from Brazil,* 52 FR 8947, 8948 (March 20, 1987); *Final Determination of Sales at Less Than Fair Value; Certain Granite Products from Italy,* 53 FR 27187, 27191 (July 19, 1988). Furthermore, our questionnaire instructed respondents that ''if home market or third-country sales are not being used to establish foreign market value, provide selling expenses on U.S. sales of the subject flower type.''

For the preliminary results and in prior reviews of this order, we used only those U.S. selling expenses incurred in Colombia for purposes of calculating a surrogate value for selling expenses. However, we have revised this figure in these final results to include all U.S. selling expenses, regardless of whether these expenses were incurred by the flower grower, its offshore invoicer, or its related U.S. importer. This revision allows us to utilize the entire universe of U.S. selling expenses as the surrogate, regardless of any internal corporate decision as to whether certain selling expenses should be incurred in Colombia or transferred to an offshore invoicer or an affiliated U.S. importer.

Comment 9: The FTC argues that the Department should not allow respondents to offset CV by the amount of revenue on cuttings, other materials, or services sold in Colombia. The FTC argues that these items are not production outputs, as are culls, but rather production inputs.

Asocolflores responds that the revenues described are an appropriate offset to cost, and claims that the Department has allowed such revenue as an offset to cost in prior reviews. Asocolflores states that materials such as cuttings are part of growers'' costs, and argues that, if a grower has more cuttings than necessary and sells some of them, the revenue from those cuttings should be allowed as an offset to costs. Asocolflores contends that including these revenues in the cull revenues is the easiest way to report them in the Department's Lotus spreadsheet, and that *where* these revenues are reported is less important than *whether* they are allowed.

Department's Position: We agree with the FTC that items such as cuttings (and similar materials) are not created in the process of flower production, as are culls, but rather are inputs or materials used in producing flowers or can be a separate product line in itself. Also, the sale of services does not relate to the cost of producing flowers and therefore should not be allowed as an offset. The fact that a grower may subsidize its flower production with revenue earned from other operations is not relevant to the dumping calculation and may disguise dumping that is occurring. Therefore, we only allow revenues from operations directly related to flower production and/or sales to offset the cost of producing subject merchandise. Further, these items must be properly itemized and tied to the production and/or sales of flowers. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India,* 60 FR 10545, 10547 (Feb. 27, 1995). Therefore, for companies that reported such revenues as an aggregate part of their cull sales revenue we have disallowed the entire offset, unless the companies provided a breakdown of the various revenues they reported in the cull revenue line item elsewhere in their responses.

We recognize that our decision represents a departure from our past practice in this case. *See Fourth Review* at 15168. However, we have reexamined this issue and we conclude that, generally, cuttings, while an input into the production of flowers, are a distinct industry. Many companies are exclusively in the business of selling cuttings. If a company returned cuttings to the supplier and received a credit for those cuttings, then it should report the cost of cuttings minus the rebate. If a company produced or bought cuttings which it later sold, it should report only the cost of those cuttings used in the production of subject merchandise. To allow a company to report the revenues it receives on sales of cuttings not used in flower production would be equivalent to offsetting cost by the amount of profit received on nonsubject merchandise, which we do not allow. If a company had broken out its cost data and cull revenue data in such a way that we could correct it, then we would do so. However, where companies did not provide sufficient detail of their cost response to permit us to make such corrections, we have assumed as partial BIA that all costs associated with cuttings, other materials, and services reported by the companies are not related to flower production, and we have disallowed the cull revenue offset for the reasons outlined above.

Comment 10: The FTC argues that the Department should disallow any interest income offsets to interest expenses where the interest income was either long-term or not related to production. The FTC also argues that the Department should disallow offsets to interest expenses that are not interest income such as prompt payment discounts, monetary correction, or exchange rate gains.

Asocolflores does not contest the FTC's argument in general, but maintains that some of the revenues or discounts mentioned by the FTC should be allowed as an offset to cost, whether in the interest income section of the Lotus spreadsheet or elsewhere. Asocolflores specifically describes the situations for Flores San Juan and the Sabana Group. Asocolflores also maintains that, contrary to the FTC's statements, monetary income is a permissible offset to financial expense. Asocolflores claims that, in *Gray Portland Cement and Clinker from Mexico,* 58 FR 25803, 25806 (1993) (Comment 4) (*Portland Cement*), the Department expressly allowed monetary correction income resulting from monetary position gains as an offset to financial expense.

Department's Position: We agree in part with the FTC. Only short-term interest income directly related to operations may be used as an offset to interest expense. *See Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy,* 60 FR 31981, 31991 (June 19, 1995).

In *Portland Cement,* we included monetary gains and losses in the calculation of net financing expenses for the respondent because, in that case, the monetary correction under Mexican GAAP pertained solely to the holding of monetary assets and liabilities. Given these circumstances, not including monetary gains and losses in the calculation of net financing expenses would not have accounted for the effects of Mexico's significant inflation during the review period in question and would have distorted the firm's corporate financial expenses and income. *See Portland Cement* at 25806. In the case of Colombian GAAP, this restriction does not apply. *See* our response to Comment 11, below, concerning our treatment of inflation adjustments in this case.

With respect to Asocolflores' reference to San Juan, we do not permit

interest revenue in excess of interest expenses to offset other costs. *See* our response to Comment 32, below. Finally, with respect to Asocolflores' reference to Sabana, the firm reduced its financial expenses by an amount for discounts which it received from suppliers. However, the firm did not provide the requisite information for us to properly assign these discounts to costs of the applicable flower types. *See* our response to Comment 41, below. Therefore, we have not adjusted for these discounts.

Comment 11: The FTC argues that the Department should use respondents' reported inflation adjustments as reflected in their financial statements, but should not allow respondents' claimed offsetting adjustment for monetary correction. The FTC argues that failure to include the inflation adjustment would distort production costs for purposes of the dumping analysis. The FTC argues that excluding the inflation adjustment would result in costs which are not reflective of current price levels and thus produces an improper matching of revenues and expenses. The FTC cites *Roses* in support of its argument. The FTC further notes that certain respondents have included monetary correction income as cull revenue or other financial income.

Asocolflores argues that the Department should not make a one-sided adjustment for inflation to depreciation and amortization costs. Asocolflores states that the Department did not gather actual inflation adjustment data from the companies in *Roses,* but performed its own incorrect calculations and made only a partial adjustment. According to Asocolflores, the Department should disregard the inflation adjustments and calculate CV using a company's actual, unadjusted costs. If the Department does use this data, Asocolflores contends it must take into consideration not only the increase in depreciation and amortization expenses, but also the monetary correction resulting from the inflation adjustments to depreciable assets. Respondents assert that the Department allowed monetary correction offsets in *Portland Cement* and *Porcelain-on-Steel Cookware from Mexico,* 55 FR 39186 (September 25, 1990) (*Cookware from Mexico*), and there is no basis for disregarding it here. Asocolflores contends that the Department needs to focus not just on the adjustments to non-monetary depreciable or amortizable assets which result only in changes to a company's balance sheet as it did in *Roses,* but also on adjustments to both the costs and income reported in the profit and loss statement.

Asocolflores argues that three separate adjustments are required to perform the inflation adjustments required by Colombian tax laws. First, Asocolflores states that the value of assets must be adjusted to reflect the hypothetical increase in value due to inflation. Asocolflores explains that this amount is recorded as a debit to the asset account and a credit to a ''monetary correction'' account that all companies are required to establish in their books, and the monetary correction account is a profit and loss statement account which ''corrects'' the monetary value of non-monetary assets, liabilities, and equity for inflation. Second, Asocolflores asserts, the upward adjustment to the value of the asset leads to an upward adjustment to depreciation expense. Asocolflores explains that the companies record depreciation expense calculated at historical cost plus the adjustment due to inflation as a debit to the depreciation expense account and a credit to the accumulated depreciation account. Third, Asocolflores states that the companies adjust the accumulated depreciation account for inflation. Therefore, Asocolflores asserts, the amount of the adjustment is debited to the monetary correction account and credited to the accumulated depreciation account.

Asocolflores explains that companies generally responded to the Department's questionnaire by providing the data concerning both the depreciation expense (cost) and monetary correction (income) effects of the inflation adjustment to depreciable/amortizable assets, resulting in an increase of depreciation or amortization expense. Asocolflores states that companies also reported the monetary correction they are required to recognize on their books as a result of the difference between required inflation adjustments to asset value and accumulated depreciation. Asocolflores explains that the companies generally reported this monetary correction as an offset to costs as ''cull revenue,'' since this was the only line on the Lotus spreadsheet on which such income could be reported and still allow the Department to use the spreadsheet to calculate CV properly.

Asocolflores argues that, in cases involving non-hyperinflationary economies such as Colombia, the Department ordinarily does not make any adjustments to depreciation or amortization expenses for inflation. Asocolflores cites *Portland Cement* to support its contention that the only possible legal basis for including inflation adjustments is that (1) they are required by Colombian GAAP, and (2) they are not distortive. Asocolflores contends that, if the Department makes adjustments, they must reflect the full adjustments required in Colombia. According to Asocolflores, any adjustment made to just depreciation and amortization is distortive from the perspective of cost accounting and should therefore be disregarded. Asocolflores further contends that, by calculating CV on a monthly basis, the Department is already ensuring that it does not distort the dumping calculations by mismatching costs and revenues. Asocolflores contends that the Department's precedent in *Roses,* where it recognized the unfairness of comparing monthly prices with an annual CV calculated using full-year inflation adjustments and adjusted for inflation only through the middle of the period so as to estimate a midpoint average cost, contradicts the intended approach in this case of using full period inflation adjustments in a comparison with unadjusted monthly sales prices.

In rebuttal, the FTC argues that the Department should reject Asocolflores' July 21, 1995 submission as untimely. The FTC argues that the submission contained new factual information, which was submitted after the preliminary results of review. The FTC argues that the Department should not allow an offset for monetary correction income that does not ultimately benefit flower producers and is not real income. The FTC also argues that, although the Department has accepted an income offset in the treatment of monetary correction in *Portland Cement* and *Cookware from Mexico,* this acceptance does not compel the Department to make an offset in these reviews. Finally, the FTC contends that, if the Department not use respondents' supplemental inflation adjusted costs, it should ensure that all monetary correction income included in respondents' original responses has been excluded from the database.

Department's Position: We disagree with respondents. For these final results, we have used respondents' revised depreciation and amortization expense figures, which have been adjusted for the effects of inflation, in calculating CV. However, we have excluded the amount of monetary correction income that respondents claimed as an offset to production costs. With respect to the FTC's argument that we should reject Asocolflores' July 21, 1995 submission as untimely, we disagree. We requested this information

in our supplemental questionnaire of June 21, 1995 concerning inflation adjustment.

In general, CV includes amounts for depreciation of fixed assets that are used to produce the subject merchandise. Most often, these fixed assets are recorded for normal accounting purposes at their historical cost (*i.e.*, the original purchase price of the assets). Consequently, amounts incurred for depreciation reflect the historical cost of the underlying fixed assets spread systematically over the assets' useful lives. In an inflationary economic environment, however, depreciating fixed assets based on historical costs fails to adequately measure the cost of those assets relative to the sales income that results from the merchandise they produce. For this reason, in many countries that experience high inflation, GAAP requires that fixed assets be indexed (*i.e.*, increased) annually to reflect the increasing nominal value of those assets as stated in prevailing currency units.

The Department also recognizes the effects of inflation on costs in its antidumping analysis. Specifically, in cases involving respondents whose home market economies are hyperinflationary (which the Department considers to be annual inflation greater than 50 percent), the Department resorts to the use of monthly replacement costs. *See, e.g., Final Determination of Sales At Less Than Fair Value: Ferrosilicon From Brazil,* 59 FR 732 (January 6, 1994).

In other instances, where the home market economies, while not reaching the Department's annual hyperinflationary threshold during the period of investigation (POI) or the POR, nonetheless exhibit significant inflation from year to year, the Department has adjusted respondents' depreciation expenses in order to permit a more appropriate matching of costs and prices based on equivalent currency units. *See, e.g., Aimcor, Alabama Silicon, Inc., and American Alloys, Inc.* v. *United States,* Slip Op. 94–192 (CIT 1994) (*Ferrosilicon From Venezuela*). Stated another way, at hyperinflationary levels, the Department adjusts *all* production costs for the effects of inflation. On the other hand, at inflationary levels that, if compounded from year to year, significantly affect the value of historically-based fixed assets, the Department adjusts only depreciation expense for the effects of inflation.

In the instant case, while the Colombian economy did not experience hyperinflation during any of the PORs, it did see annual inflation rates between 20 and 30 percent in the five years leading up to and including the PORs. Therefore, the effect of compounded annual inflation results in a distortion of historical depreciation. More specifically, the compounded annual inflation results in an understatement of costs. In order to correct this distortion, the Department asked respondents to submit revised CV figures reflecting depreciation expense amounts adjusted for inflation. The inclusion of inflation-corrected depreciation amounts in CV is consistent with past Departmental practice, as demonstrated in *Ferrosilicon from Venezuela, Roses from Colombia* and *Roses from Ecuador.* The Department's methodology corrects understated depreciation and amortization costs, which results from significant inflation compounded over some extended time period. This approach is also consistent with Colombian tax law, which requires firms to revalue certain financial statement accounts to reflect the effects of inflation experienced in each financial reporting period. *See* Memorandum from Holly Kuga to Joseph Spetrini, dated November 8, 1995.

As noted above, in antidumping cases involving countries whose economies are continually marked by high inflation (but not hyperinflation), the Department has adjusted depreciation expenses reported by respondents while allowing other costs, such as materials and labor, to be recorded at their current, nominal values. This has been done in recognition of the fact that, over time, consistently high inflation rates greatly affect the nominal value of fixed assets that are recorded for accounting purposes at historical costs. At the same time, however, because the price level changes in these cases do not reach those defined by the Department's hyperinflation threshold, this practice purposely ignores other inflation effects that can occur within the POI or POR. Such effects are numerous and can either increase or decrease costs or prices as stated in real terms. Yet because these inflation effects are contained largely within the POI or POR, unless demonstrated to be otherwise, their net effect on the Department's analysis is presumed to be minimal.

Regarding respondents' claim that our methodology imposes a ''one-sided'' adjustment, we note that the inflation accounting adjustment to fixed assets does not ''create'' income. That is, the fact that a company may own fixed assets does not in some way earn that company income simply as a result of accounting for inflation. Rather, ownership of fixed assets at best acts as a hedge against inflation, neither creating nor generating a loss in asset value.

The purpose of requiring an adjustment to fixed assets under Colombian GAAP (or under the GAAP of any country which accounts for inflation) is to measure the gains and losses on *monetary* assets and liabilities, such as cash or accounts payable, which are exposed to inflation. The Colombian tax law adjusts for high inflation by requiring a form of price-level accounting, a method that revalues fixed assets to provide constant currency, as opposed to historical cost information.

The mechanics of the inflation adjustment for fixed assets require companies to increase or ''debit'' fixed assets by an amount equal to the year's inflation index. At the same time, as part of the accounting entry, a corresponding ''credit'' is recorded to a monetary correction account, which has the effect of increasing financial statement income for the same year. This is the income that respondents maintain is somehow generated by their fixed assets. There is no merit, however, to respondents' claim that the Department is making only a ''one-sided'' adjustment by ignoring the ''credit'' to income. The ''debits'' to the fixed asset (*e.g.*, the flower plants) and the ''credit'' to financial income are in no way related for purposes of calculating CV. As stated above, the revaluation of flower plants and other fixed asset costs to account for inflation does not, in and of itself, create income. Further, it does not create income related to flower production.

We disagree with respondents' assertion that it is inappropriate to focus on adjusting CV for the effects of inflation on depreciation and amortization expense. That is precisely what the Department did in *Ferrosilicon from Venezuela,* where the Department used a depreciation expense figure which was based upon revalued, as opposed to historical, fixed assets. Inflation adjustments were not applied to any other balance sheet or income statement accounts. Moreover, as in Colombia, the inflation rate in Venezuela prior to and during the POI was significant, but failed to reach the Department's hyperinflation threshold.

We also find that respondent's reliance on *Portland Cement* and *Cookware from Mexico* is misplaced. It is important to note that inflation accounting practices vary from country to country. In the cases cited by respondents, under Mexican GAAP, the Department's acceptance of the monetary correction related solely to each respondent's financing expenses

and not, as Asocolflores asserts, to the fixed assets and depreciation expense.

We also find respondents' contention that it is inappropriate to compare annualized costs, which have been adjusted for inflation, to monthly U.S. sales prices, which have not been adjusted, to be without merit. What respondents fail to recognize in making this argument is that production costs were incurred in the Colombian economy, which, as discussed earlier, has experienced significant inflation for a number of years. The U.S. sales prices, on the other hand, are denominated in U.S. dollars and have occurred in an economy which has experienced extremely low inflation during this same time period. In consideration of these important differences, our comparison of inflation-corrected Colombian costs to the nominal U.S. prices is valid and appropriate for these reviews.

Company-Specific Issues Raised by the FTC

Comment 12: The FTC points out that Agricola de los Alisos has been included among the companies that the Department could not locate although the company had filed a letter notifying the Department that the company was liquidated in December 1992. The FTC argues that Agricola de los Alisos and any other company that has officially gone out of business should be assigned a margin based on a second-tier rate of BIA, consistent with the standard enunciated in previous reviews.

Department's Position: We agree with the FTC that we should not treat Agricola de los Alisos as a company that could not be located. Agricola de los Alisos filed a letter and certification with the Department in May 1994 indicating that it is no longer in business. Consistent with our treatment of companies that are no longer in business, we have applied a second-tier BIA rate to Agricola de los Alisos. *See Fourth Review* at 15173.

Comment 13: The FTC notes that Florex reduced the expenses of its invoicing agent by short-term interest income allegedly gained on working capital. However, because these expenses are related to the sales of subject merchandise, not the production thereof, the FTC asserts that they are not eligible for such an offset adjustment. The FTC requests that the Department increase the selling expenses incurred by Florex's related invoicing agent by the amount of short-term interest income.

Asocolflores agrees that these expenses are selling expenses, and not related to production. However, Asocolflores contends that to ignore the short-term interest income would distort the actual selling expenses of this agent. Furthermore, Asocolflores asserts, the Department has visited this issue in previous reviews and has rejected it.

Department's Position: We examined the expenses reported by Florex's related selling agent and have determined that some, if not all, of the interest income derives from intracompany loans. It is the Department's practice to ignore such intracompany transfers regardless of whether they relate to sales or production. *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review,* 56 FR 32169, 32172 (July 15, 1991). For these final results, because we could not segregate the intracompany loans from the interest income reported, we have denied the entire interest income adjustment.

Comment 14: The FTC asserts that Cultivos Miramonte (Miramonte) departed from its normal accounting records by reporting a different depreciation period for its ''land adequation'' costs than it records in its normal accounting system (Miramonte explained in its response that land adequation is comprised of expenses to level the terrain, dig ditches, and construct drainage systems for the greenhouses). The FTC asserts that Miramonte has not provided evidence that the five-year useful life recorded in its accounting records is inappropriate nor that the 20-year useful life reported in its response is more appropriate. The FTC asks the Department to recalculate Miramonte's land adequation costs on a five-year basis as per its accounting records.

Asocolflores rebuts that Miramonte has consistently used this methodology since the third review of this order. Asocolflores argues that the FTC has never raised this issue and the Department has twice verified Miramonte and has accepted its methodology in the third and the fourth reviews.

Department's Position: We agree with the FTC. Our practice is to adhere to an individual firm's recording of costs in accordance with GAAP of its home country if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa,* 60 FR 22556 (May 8, 1995) (''The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise''). This practice has been sustained by the CIT. *See, e.g., Laclede Steel Co.* v. *United States,* Slip Op. 94–160 at 21–25 (CIT October 12, 1994), upholding the Department's decision to reject the respondent's reported depreciation expenses in favor of verified information obtained directly from the company's financial statements that was consistent with Korean GAAP; *Hercules, Inc.* v. *United States,* 673 F. Supp. 454 (CIT 1987), upholding the Department's decision to rely on COP information from respondent's normal financial statements maintained in conformity with GAAP.

In this case, Miramonte has departed from its normal accounting records in its reporting of the ''land adequation'' costs included in its depreciation expense. This was in contrast to instructions in our questionnaire, which stated that ''regardless of whether your company capitalized expenditures or expensed them, the cost submission should be consistent with your normal production accounting system and based on your actual accounting records, if your system and records are in accordance with Generally Accepted Accounting Principles (GAAP).'' Miramonte claimed that the greenhouse manufacturer expected the greenhouse to have a useful life of 20 years. Accordingly, Miramonte amortized its greenhouse expenses over a 20-year period in both its accounting records and its response. In contrast to greenhouse expenses, the land adequation costs were amortized over a five-year period in its accounting records. Although Miramonte stated that it considered land adequation to have the same useful life as a greenhouse, it never explained why it treated land adequation expenses differently in its accounting records, nor did Miramonte justify why a five-year amortization did not reasonably reflect the cost of producing the merchandise. Thus, we agree with the FTC that Miramonte failed to justify that the five-year amortization of land adequation expenses in its accounting records does not reasonably reflect the cost of producing the subject merchandise.

With respect to Asocolflores' contention that we have verified and accepted this methodology in previous reviews, we first note that verification of the values used in a methodology does not indicate acceptance of the methodology itself. We agree with Asocolflores that the FTC has not raised this issue in the past. An error in methodology, unmentioned and undiscovered in previous reviews, does not constitute explicit acceptance of that methodology. Nor are we bound by past

reviews when we do discover a significant error. *See Shikoku Chemicals Corp.* v. *United States,* 795 F.Supp. 417 (CIT 1992). In examining this methodology in these instant reviews, we have found the error to be significant. Miramonte's reported land adequation costs are approximately one-fourth of the amount recorded in its accounting records. Therefore, for these final results, we have increased Miramonte's depreciation expense to reflect the same amount of land adequation costs recorded in its accounting records.

Comment 15: The FTC claims that Industrial Agricola departed from its ordinary accounting practice in preparing the questionnaire response by amortizing pre-production expenses and depreciating greenhouse costs even though such items have been expensed in its books. The FTC argues that, unless Industrial Agricola can show that the normal methodology for depreciation creates a distortion, it should not depart from its normal cost accounting procedures. Citing *Cemex S.A.* v. *United States,* Slip Op. 95–72, 29 Cust. Bull., No. 20, 119, 128 (CIT April 24, 1995), the FTC argues that the fact that accelerated depreciation is permitted under the tax rules of the country in question does not establish that such depreciation is reasonable. The FTC requests that the Department correct Industrial Agricola's response to eliminate any distortion.

Industrial Agricola maintains that it followed its practice in previous reviews of amortizing pre-production expenses and depreciating greenhouse costs even though such items have been expensed in its books. Respondent contends that the Department has recognized that, in this case, these specific expenses and costs are appropriately amortized in order to avoid distortions and to match costs with revenues.

Department's Position: We agree with Industrial Agricola. It is our policy to allow companies to depreciate capital assets over their useful lives and to amortize pre-production expenses in order to avoid distortions in the cost of production, as well as to match costs with revenues. This is true even where the firm has expensed the costs in its books.

Normally, we require respondents to report production expenses pursuant to their home country GAAP. However, we may reject the use of home country GAAP as the basis for calculating production costs if we determine that the accounting principles at issue unreasonably distort or misstate costs for purposes of an antidumping analysis. In these instances, we may use alternative cost calculation methodologies that more accurately capture the costs incurred during the POR.

Though Colombian GAAP permits companies to expense the purchase of fixed assets when they are incurred, U.S. GAAP calls for the depreciation and recovery of costs over the expected productive life of a fixed asset. The estimated useful life of a fixed asset is the period over which the asset may reasonably be expected to be useful to the individual's business or to the production of income. *See Fresh Kiwifruit from New Zealand; Final Results of Antidumping Duty Administrative Review,* 59 FR 48596, 48598 (Sept. 22, 1994). Similarly, amortizing pre-production expenses allows a firm to more accurately match these expenses with the sales to which they are attributable. In this instance, because the economic useful life of Industrial Agricola's greenhouses and pre-production expenses extend past the year of purchase, we find that its method of accounting for these costs in its own books does not reasonably reflect costs for our antidumping analysis. Therefore, we accept Industrial Agricola's methodology of amortizing pre-production expenses and depreciating greenhouse costs.

Comment 16: The FTC claims that Flores Aurora's amortized pre-production costs may have been inaccurately calculated. The FTC alleges that pre-production expenses were reported as percentages rather than amounts as required by the questionnaire. The FTC requests that the Department correct Flores Aurora's response so that the actual amounts, and not percentages, are used in the relevant lines in the Lotus spreadsheet.

Flores Aurora states that it reported pre-production costs accurately in peso amounts and that the FTC misinterpreted Aurora's narrative response without examining the relevant section of the Lotus spreadsheet Aurora provided.

Department's Position: We agree with Flores Aurora that it reported pre-production cost accurately. In Aurora's August 19, 1994, supplemental response, it reported expenses as peso amounts, not percentages. We subsequently verified this reporting methodology. *See* Flores Aurora Verification Report at 10. Therefore, we have accepted Flores Aurora's calculations.

Comment 17: The FTC claims that Flores Aurora revised its packing expense calculations, involving a factor for packing hours per flower type, after verification. The FTC asserts that the new methodology is based on only a one-day survey to derive the factor and is therefore questionable. The FTC contends that the packing hours by flower type could have been affected by the identity or competency of the workers as well as the number of orders processed that day. The FTC urges the Department to require Flores Aurora to resubmit its calculations based on a longer survey period or assign packing labor costs based on BIA.

Flores Aurora states that its packing expense data was revised and reviewed by the Department during verification. The firm also argues that, since it does not keep records that segregate packing costs by flower type, it was reasonable for the Department to accept the survey.

Department's Position: We agree with Flores Aurora that packing labor was revised during verification and not after verification. We reviewed and verified the firm's methodology for calculating expenses and found it to be accurate. *See* Flores Aurora Verification Report, November 4, 1994. For packing expenses, Aurora initially calculated a standard packing labor and materials cost per box for each flower type, then multiplied this cost by the number of boxes shipped to each customer during each POR. During verification, we compared Aurora's standard costs to actual costs as indicated by Aurora's available source documents and asked the firm to report actual costs based on the variance. To calculate the actual number of hours needed to pack a box of each flower type, Aurora submitted worksheets compiling packing labor information from each of its packing rooms for one workday. We find this methodology to be reasonable because the survey includes virtually all of Aurora's packing workers and, therefore, would not be unduly affected by the competency of the workers surveyed. In other words, the large number of workers included in the survey ensured an accurate average. Also, since the survey was used to compute the amounts of time needed to pack a box of each type of flower, order variations on any given day are not a significant factor. Based on our verification efforts, we are satisfied that Aurora's revised figures are accurate.

Comment 18: The FTC argues that the Funza Group had Colombian borrowings during the 5th review and, therefore, credit expenses for the 5th review should be recalculated based on a peso-denominated interest rate.

The Funza Group argues that a U.S. borrowing rate should apply to credit expenses for Funza and all other respondents.

Department's Position: We agree with the FTC. *See* our response to Comment 22, below.

Comment 19: The FTC argues that the Funza Group deviated from its accounting records without reason. According to the FTC, the Group expensed greenhouse costs in its records, but for purposes of the response it depreciated the expenses on a monthly basis over the life of the greenhouse. The FTC contends that depreciation costs of greenhouse expenses should be recalculated to conform to the firm's normal cost practices.

The Funza Group claims that, because a greenhouse has a useful life exceeding the period in which the expense is incurred, costs would be grossly distorted if the Department expensed them as the Group did in its books and records.

Department's Position: We agree with the Funza Group. Although the company may have expensed greenhouse costs for tax purposes, we find that this method of accounting distorts costs for purposes of our analysis. Depreciating fixed assets over their useful life more accurately reflects the cost of sales during each POR. *See* our response to Comment 15, above, concerning a similar situation with Industrial Agricola.

Comment 20: The FTC claims that Funza allocated Colombia Flower Council (CFC) charges by flower type based on number of boxes shipped, which is contrary to the Department's questionnaire instructions to allocate such costs on the basis of sales value, rather than volume, if they are paid as a fixed percentage of sales. The FTC requests that the Department reallocate these costs on the basis of value and deduct them from USP as direct selling expenses.

The Funza Group argues that CFC fees are assessed based on a fixed charge for each box of flowers sold; therefore, the Funza Group maintains, the charges should be allocated based on the number of boxes sold rather than the relative value of sales.

Department's Position: We disagree with the FTC. We generally prefer expenses to be allocated on the basis in which they are incurred. Because the CFC fees are incurred on a per-box basis, we have accepted the Funza Group's allocation methodology.

General Issues Raised by Asocolflores

Comment 21: Asocolflores requests that the Department issue duty rates consistent with the units in which each respondent reported its data. Asocolflores expresses concern that the Department might assess a per-stem duty rate for companies that reported their data in bunches, and that this would cause the assessed duties and duty deposits to greatly exceed the actual amount of dumping the Department found in its margin analysis.

Department's Position: We intend to issue duty rates either on the basis of the units in which the individual respondent reported its data or on a Customs entered value basis. If we assess on the basis of Customs entered value, the rates will be assessed as a percentage of the total entered value of the imported subject merchandise. Therefore, Customs will collect the proper amount of antidumping duties owed regardless of whether the respondent reported units in bunches or stems.

Comment 22: Asocolflores, the Florex Group, the Claveles Colombianos Group, the Santana Flowers Group, and the Floraterra Group argue that applying a peso-denominated short-term borrowing rate to sales made in U.S. dollars is contrary to current Department policy, economic and commercial reality, and the law as established in *LMI–La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455, 460–61 (Fed. Cir. 1990) (*LMI*). Citing recent cases such as *Roses* and *Brass Sheet and Strip from Germany: Final Results of Antidumping Duty Administrative Reviews*, 60 FR 38542, these respondents state that Department policy mandates use of a U.S. dollar interest rate to calculate imputed credit on U.S. sales even in cases where a respondent has no borrowings. Respondents also argue that, in *LMI*, the court reversed the Department's decision to apply a higher home market borrowing rate to sales denominated in U.S. dollars and directed the Department to recalculate imputed credit expenses using a U.S. dollar rate under the rationale that a borrower will look for the lowest possible rate across international borders. Respondents conclude that the only way to measure the cost of financing sales made in U.S. dollars is by applying a dollar interest rate to the dollar price. Respondents recommend that the Department use the U.S. prime rate to calculate credit expenses for firms with no actual U.S. dollar borrowings.

The FTC states in its rebuttal brief that respondents argued in the fourth review that, as a result of the steady devaluation of the Colombian peso against the U.S. dollar, it is cheaper to borrow pesos in Colombia than it is to borrow dollars. The FTC asserts that this seems to refute respondents' claim in these three reviews that peso borrowings to finance dollar debt is contrary to economic reality. The FTC also indicates that *LMI* does not apply because, in that case, the foreign producer had actually obtained dollar-denominated loans and could be expected to use such financing with respect to its U.S. sales. The FTC points out that *LMI* did not hold that, where a company had actual borrowings in a particular currency, that rate should be rejected in favor of an estimate of the rate that would have been obtained if the company obtained dollar-denominated loans. The FTC argues that the currency in which a sale takes place does not necessarily have any relationship to the borrowing rate faced by a grower, and that the Department must derive the appropriate interest rate from the firm's actual borrowing experience. Finally, the FTC concludes that not all respondents would be able to obtain dollar-denominated financing and that the Department lacks authority to estimate a dollar rate where the record contains evidence of the actual costs.

Department's Position: Consistent with our practice in the *Fourth Review* and in the preliminary results of these reviews, we used U.S. dollar borrowing rates to impute U.S. credit expenses where the respondent or a U.S. related party had U.S. dollar short-term borrowings. However, where a respondent (or its U.S. related party) had no dollar borrowings and financed its working capital through Colombian peso borrowings, we calculated U.S. imputed credit expenses using the firm's actual peso-denominated short-term borrowing rate, and adjusted this rate to reflect the appreciation of the dollar against the peso. We did this by subtracting the rate of appreciation of the dollar against the peso during each POR from the peso-denominated short-term borrowing rate reported by the firm. Only where no short-term borrowings were reported in either currency did we use the U.S. prime rate during each POR.

Although we recognize that our current decision represents a change from our recent practice, we disagree with respondents that our decision to use peso-denominated short-term borrowing rates, adjusted for currency fluctuations, is contrary to commercial reality and the law as established in *LMI*. In *LMI*, the CAFC stated that the cost of credit ''must be imputed on the basis of usual and reasonable commercial behavior.'' *LMI–La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455, 461 (Fed. Cir. 1990). Because the respondent in *LMI* provided

evidence that it had obtained dollar-denominated loans during the period of investigation, and because the dollar rate was lower than the corresponding lira rate, the CAFC held that the Department should have used the lower dollar rate for purposes of calculating imputed credit. However, in this case, many of the respondents did not have U.S. dollar-denominated loans.

After *LMI,* during the LTFV investigations involving certain carbon steel butt-weld pipe fittings, the Department proposed a new policy for selecting interest rates to be used in imputed credit calculations. *See* Memorandum from Program Manager to the File (August 8, 1996), attaching a September 6, 1994, Memorandum from the Director of the Office of Investigations to the Deputy Assistant Secretary for Investigations (hereinafter referred to as ''the 1994 Memorandum''). The 1994 Memorandum suggests that, in situations where the respondent has no short-term borrowings in the currency of the transaction, the Department can: (1) Accept ''external'' information about the cost of borrowing in the relevant currency; or (2) adjust for the application of a single, observed interest rate to both home market and U.S. sales, taking into account exchange rate fluctuations between the two currencies. The 1994 Memorandum gave preference to the first option; however, it acknowledged the acceptability of using borrowing rates incurred in a different currency from that of the transaction, if the rates are adjusted for exchange rate fluctuations.

The 1994 Memorandum makes clear that the practice of using unadjusted home market currency borrowing rates to impute U.S. credit expenses is not acceptable because it does not account for fluctuations in exchange rates over time. This reasoning was further articulated in the *Final Determination of Sales at Less Than Fair Value; Oil Country Tubular Goods from Austria,* 60 FR 33551, 33555 (June 28, 1995) (*OCTG*). In *OCTG* the Department stated,

> A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this case, in dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made in, and future payments are expected in, a given currency, the measure of the company's extension of credit would be based on an interest rate tied to the currency in which its receivables are denominated. Only then does establishing a measure of imputed credit recognize both the time value of money and the effect of currency fluctuations on repatriating revenue.

The new policy described in the 1994 Memorandum was most recently implemented in *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 14049, 14054 (March 29, 1996) (*Steel*). In *Steel,* the Department stated,

> When a respondent has no U.S. borrowings, it is no longer the Department's practice to substitute home market interest rates when calculating U.S. credit expense and inventory carrying costs. Rather, the Department will now match the interest rate used for credit expenses to the currency in which the sales are denominated. * * * Where there is no borrowing in a particular currency, the Department *may* use external information about the cost of borrowing in that currency. * * * *In the absence of U.S. dollar borrowings, we need to arrive at a reasonable surrogate for imputing U.S. credit expense.* There are many and varied factors that determine at what rate a firm can borrow funds, such as the size of the firm, its creditworthiness, and its relationship with the lending bank.

(Emphasis added.) *See also Final Results of Antidumping Duty Administrative Review; Certain Cut-to-Length Carbon Steel Plate from Sweden,* 61 FR 15772, 15780 (April 9, 1996).

We note that *Steel* does not state that, in the absence of U.S. dollar-denominated loans, the Department will impute credit expenses based on ''external information.'' Rather, *Steel* states that the Department will use a *reasonable surrogate* for imputing U.S. credit expenses. Respondents' actual peso-denominated short-term borrowing rates, adjusted for the rate of appreciation of the dollar against the peso, are reasonable surrogates for U.S. dollar short-term borrowing rates. Such rates are reasonable because the cost of extending credit to customers can be measured by a company's actual short-term borrowing experience. Companies often take out short-term loans to fund business operations in anticipation of receiving revenue, especially small flower growers who sell on a consignment basis. Therefore, if a flower grower's operations are paid for in pesos, it is reasonable to use the company's actual peso-denominated short-term borrowing rate to measure the opportunity cost of extending credit to customers, if that rate is adjusted for fluctuations in the peso/dollar exchange rate to take into account ''the effect of currency fluctuations on repatriating revenue'' noted in *OCTG.*

We recognize that in the recent *Steel* decisions, issued in March and April of this year, we used average short-term lending rates calculated by the Federal Reserve as surrogates for actual U.S. dollar borrowing rates. However, we have decided not to reopen the record at this late stage in order to collect Federal Reserve borrowing rates and solicit comments on their use, given that: (1) The adjusted home market interest rates that we have used are reasonable surrogates for imputing U.S. credit expenses; (2) several hundred recalculations would be required in order to impute credit expenses on a different basis; and (3) further delays in issuing these final results would be caused by reopening the record and recalculating this adjustment. *See Tapered Roller Bearings Four Inches or Less in Outside Diameter from Japan; Final Results of Antidumping Duty Administrative Review,* 55 FR 22369 (June 1, 1990) (Comment 27).

Finally, as stated by the FTC, we note that, during the fourth review, respondents did not contend that the use of peso-denominated short-term borrowing rates (adjusted for exchange rate fluctuations) was inappropriate for respondents with no U.S. dollar borrowings. Instead, respondents implied that adjusted peso-denominated short-term borrowing rates did reflect economic reality, arguing that borrowing pesos in Colombia was cheaper than borrowing U.S. dollars, even when financing dollar debt. In the fourth review, respondents contended only that we should adjust the peso-denominated short-term borrowing rates for devaluation of the peso against the dollar (*i.e.,* currency fluctuation), and we made this adjustment. During the fourth review period, the dollar appreciated against the peso at a high rate. This resulted in a large downward adjustment to the peso-denominated short-term borrowing rates, and, therefore, a low U.S. imputed credit calculation. However, during the current reviews, the rate of appreciation of the dollar against the peso was not as significant, and, therefore, the offsets to the peso-denominated short-term borrowing rates are smaller. Respondents now object to the use of peso-denominated short-term borrowing rates, arguing that they do not reflect ''economic reality.'' However, it would be inappropriate for the Department to change its practice in these reviews merely because the lower rate of appreciation of the dollar against the peso would result in less favorable adjustments for respondents.

Comment 23: Asocolflores contends that the Department's methodology for adjusting the peso borrowing rates used to calculate U.S. imputed credit expenses is incorrect because it

measures the effective peso borrowing rate, *e.g.*, the cost of borrowing pesos to finance the equivalent in pesos of dollars. Asocolflores contends that, if the Department continues to use an adjusted peso borrowing rate to calculate U.S. imputed credit expenses, it should use a methodology that measures the equivalent dollar borrowing rate, *e.g.*, the effective cost of lending dollars when the original borrowing is in pesos.

The FTC contends that the Department's methodology for adjusting the peso borrowing rates is correct, and that the Department should reject respondents' proposed calculation methodology.

Departments Position: To account for fluctuations in the peso/dollar exchange rate, and because U.S. imputed credit expenses must be quantified in dollars so that they may be deducted from USP, we adjusted peso borrowing rates for the devaluation of the peso against the dollar before we used those rates to calculate U.S. imputed credit expenses. Our methodology measures respondents' borrowing costs in real terms. As explained in our response to Comment 22 above, this methodology is reasonable. Therefore, we have not used Asocolflores' proposed methodology.

Comment 24: Asocolflores argues that the Department should use annually-averaged U.S. prices in its margin analysis. It argues that, due to (1) The inability to control production in the short-term, (2) the highly perishable nature of the product and the inability to store production, and (3) the extreme seasonality of demand and prices, the only way to appropriately measure U.S. prices is by using annually-averaged U.S. prices.

The FTC responds that the Department has based U.S. prices on monthly averages consistently throughout this proceeding and that there are no new facts that compel the Department to do otherwise.

Department's Position: Section 777A of the Act allows the Department to ''use averaging or generally accepted sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required.'' Further, the Act states that the ''authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.'' *See also* 19 CFR 353.59(b) (1994).

In prior reviews and the investigation of Colombian flowers, we have exercised our authority under section 777A by using monthly U.S. averages to calculate USP. *See, e.g., Second Review* at 20495. This use of monthly averaging has been upheld by the CIT. *See, e.g., Floral Trade Council* v. *United States,* 775 F. Supp. 1492, 1499–1501 (CIT 1991).

For the current reviews of Colombian flowers, we have continued to use monthly averages as this averaging period compensates for the perishability of the subject merchandise. We reject respondents' invitation to engage in annual U.S. averaging because, as in prior reviews, annual averaging creates the potential for masking dumped sales (*i.e.*, annual averaging would allow exporters to dump for entire months when demand is sluggish, so long as they recoup their losses during months of high demand). Therefore, we have continued our practice of using monthly average U.S. prices in our margin analyses.

Comment 25: HOSA Ltda. and Asocolflores argue that costs should be allocated over all flowers sold, including ''national quality'' flowers. Their arguments are based on two developments. First, both claim that national quality flowers are now sold in the United States and that this development is supported by the Department's verification report dealing with HOSA's sales activities. Because national quality flowers are subject to the order, respondents argue, such flowers cannot have a cost of production of zero. Second, both cite the 1990 decision of the CAFC in *IPSCO, Inc.* v. *United States,* 965 F.2d 1056 (*IPSCO*), in support of their argument that the Department can no longer treat national quality flowers as by-products with no cost. Respondents argue that the only difference between national and export quality flowers is quality and thus value. Respondents further argue that *IPSCO* held that the Department may only treat as a by-product products which are distinct in kind from the primary product subject to investigation and that lower quality grades of the same product, used for the same purposes as the primary product and produced by the same process, may not be treated as a by-product.

The FTC argues that national quality flowers are not co-products and that the test to determine whether a product should be treated as a co-product or by-product is (1) Whether the value of the product is lower in relation to the principal product, and (2) whether the product's production is only incidental to the production of the main product. The FTC concludes that, since no flower producer intends to produce lesser quality flowers, national quality flowers are correctly treated as by-products. The FTC also argues that HOSA's and Asocolflores' reliance on *IPSCO* is misplaced. In the FTC's view, the CAFC did not address the issue of whether the value difference between the products necessitated by-product treatment.

Department's Position: We disagree with HOSA. One of the factors the Department uses to assess the proper accounting treatment of jointly-produced products is a comparison of the value of each specific product relative to the value of all products produced during, or as a result of, the process of manufacturing the main product or products. In this regard, the distinguishing feature of a by-product is its relatively minor sales value in comparison to that of the major product or products produced. Our general practice in cases involving agricultural goods has been to treat ''reject'' products as by-products and to offset the total cost of production with revenues earned from the sale of any such ''reject'' products. We then allocate the cultivation costs, net of any recovery from ''rejects,'' over the quantity of non-reject products actually sold. *See, e.g., Roses; Roses from Ecuador; Fresh Cut Flowers from Colombia,* 52 FR 6844 (March 5, 1987); *Fresh Cut Flowers from Peru,* 52 FR 7003 (March 6, 1987); *Fall-Harvested Round White Potatoes from Canada,* 48 FR 51673 (November 10, 1983); *Fresh Cut Roses from Colombia,* 49 FR 30767 (August 1, 1984).

In accordance with our practice in the less-than-fair-value investigation and subsequent reviews of this case, fresh cut flowers have been classified as either export-quality (high quality) or as culls (low quality or reject). Our practice was upheld by the CIT in *Asociacion Colombiana de Exportadores* v. *United States,* 704 F. Supp. 1114, 1125–26 (CIT 1989). The CIT found that ''[c]ulls were often disposed of as waste, or if saleable, were sold for low prices in the local market. ITA's treatment of non-export-quality flowers as a by-product was supported by substantial evidence. The record indicates that cull value was relatively low and that the production of culls was unavoidable. These both have been recognized by ITA in the past as indicia of by-product status.'' The CIT further noted that ''[c]ull value, if determinable, should be deducted from cost of production and production costs should not be allocated to culls.''

However, in these reviews, respondents have characterized culls as ''national'' or ''second'' quality flowers and have argued that, because HOSA exported some ''second-quality'' flowers, they cannot be treated as by-products. We agree with respondents that any flowers sold to the United

States should not be treated as by-products, and, for our preliminary results of review, we did in fact allocate costs to *all* export-quality flowers HOSA produced during the PORs. However, we disagree that the HOSA verification report demonstrates that cull flowers were sold to the United States. At verification, HOSA explained that it sold a small quantity of flowers that it, *HOSA*, had graded as ''second quality'' to the United States and only during periods of peak demand (''HOSA stated that * * * some second-quality flowers were even sold in the United States in periods of high demand,'' HOSA Group Verification Report (January 13, 1995), at 10). In addition, we found at verification that HOSA generally only sold export-quality flowers in the home market when demand in the United States was too low to justify shipping the flowers to the United States.

In HOSA's original section D response, HOSA reported that it has two grades: top quality, which meet all of a number of standards, and culls, which do not meet all of the standards enumerated in the response. *See* HOSA Group response to sections C and D dated July 22, 1994 at 21. Later, HOSA claimed that it did not sell culls, but rather that it sold second quality flowers in the home market. At verification, HOSA presented a list of standards that applied to all ''first quality'' flowers and explained that ''second quality'' flowers were those flowers that did not meet all of the standards necessary for a flower to be graded as ''first quality.'' *See* HOSA Group Verification Report (January 13, 1995) at 9–11. This definition of ''second quality'' flowers matches the definition of cull flowers HOSA originally reported. Therefore, we find no reason to treat what HOSA claims to be ''second quality'' flowers sold in the home market any differently than we have treated culls in these reviews.

We find that HOSA's internal grading system is not dispositive as to whether a cull is a by-product. While HOSA claims to have sold some ''second-quality'' flowers in the United States, this does not mean that HOSA did not produce and sell culls in Colombia. If a flower is to be exported it must meet the minimum grade requirements of the U.S. market, whereas a cull is any flower that does not meet those requirements. Such flowers are not intended to be produced and are not worth exporting. We use the term ''culls'' as an accounting concept in distinguishing which individual products may reasonably carry costs, but this is not necessarily a grading concept. Culls are not simply a low grade of flowers, but are unintentionally and unavoidably produced by-products that have minimal value. The record shows that the ''second-quality'' flowers sold by HOSA in the home market had very low value: ''HOSA's home market prices for 'second-quality' flowers were, on average, approximately 40% of home market prices'' for first quality (*i.e.*, indisputably export-quality) flowers, and ''*both* grades sold in the home market were, on average, below cost.'' *See* HOSA Group Verification Report (January 13, 1995) at 9–11. Contrary to HOSA's assertions, the fact that ''second-quality'' flowers sold in the home market were sold at prices well below the costs HOSA attributes to the production of these flowers suggests that there is not a genuine domestic market for ''second-quality'' flowers which HOSA claims it intends to produce. Furthermore, HOSA's claims that a few ''second-quality'' flowers were sold in the United States, and then only during peak periods of demand, leads us to conclude that the vast majority of ''second-quality'' flowers did not meet the minimum standards for sale in the United States, and that the vast majority of ''second-quality'' flowers were therefore culls.

We conclude that HOSA's domestic market is no different from the market enjoyed by other Colombian flower producers. In other words, this market exists to the extent that HOSA, like many other Colombian flower producers, sells flowers it cannot export as surplus at the farm gate for whatever price it can get for the flowers.

Nevertheless, we conducted a further test of our treatment of cull flowers as by-products. We examined the total national- and export-quality sales of the ten largest producers in these reviews in order to determine whether national-quality flower sales had significant value. Six of these firms had cull, or national, flower sales. We have found that total and average per-unit revenues generated from the sale of cull flowers were small (in most cases negligible) compared to total revenues generated from the sale of subject merchandise (including culls) (*see* Memorandum to Holly Kuga from Laurie Parkhill (July 30, 1996)). This pattern is consistent with the CIT's standard that by-products are sold at a very low value.

We find no evidence to support respondent's claim that there is little difference in grade between export-quality and national-quality flowers. We did find at verification that the prices of ''second-quality'' flowers sold in the home market were considerably less than the prices of ''first-quality'' flowers sold in the home market. No other respondents claimed that cull flowers were in any way comparable to export-quality flowers. This factual situation suggests that the grades are not comparable, and that there is a significant difference in grade between export-quality and national-quality flowers.

We disagree with respondents' argument that the inclusion of cull flowers in the class or kind of merchandise compels us, under the *IPSCO* decision, to assign cost to culls. A decision that a particular product is, or is not, within the scope of a proceeding does not dictate, nor necessarily have any relation to, the selection of the particular cost accounting methodology that must be applied in the determination of CV. We do not read the CAFC's decision in *IPSCO* as standing for the proposition that, in all circumstances, a by-product, for accounting purposes, cannot be within the class or kind of merchandise as that term is defined under the Act. Moreover, as discussed above, our position in this regard has been well-established in previous decisions and explicitly upheld by the CIT.

We have had an established practice since the less-than-fair-value (LTFV) investigation of treating cull flowers as by-products. Neither respondents nor petitioner in this proceeding have voiced any concern regarding this practice prior to these reviews. Now, HOSA and Asocolflores claim that the factual situation has changed such that we must significantly alter our treatment of cull, or national-quality, flowers. In other words, these respondents claim that (1) National-quality flowers are not by-products but co-products, (2) there is a viable market for such (national-quality) flowers in the home market, and (3) there is little difference in grade between export-quality and national-quality flowers. The burden is on HOSA and Asocolflores to demonstrate that these factual situations exist. Respondents submitted no evidence that demonstrated these three points. In fact, for each point raised by respondents, record evidence supports a different conclusion. The only change that we found appears to be HOSA's internal grading system. Therefore, we find that we have no grounds to warrant a change in our established practice.

Company-Specific Issues Raised by Asocolflores

Comment 26: Asocolflores asserts that the Department erred in collapsing eight companies into the Queen's Flowers Group. Asocolflores notes that the Department's August 3, 1995

memorandum predicates its collapsing test by examining the relationship between the Queen's Flowers Group companies under section 771(13) of the Act. Respondents assert that the Department established precedents for this analysis in *Roses from Ecuador* at 7040 and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination: Disposable Pocket Lighters From Thailand*, 60 FR 14263, 14268 (March 16, 1995) (*Lighters*). However, Asocolflores distinguishes *Roses from Ecuador* and *Lighters* from the instant case. Whereas the former cases involved collapsing the sales in the United States of related parties, in the instant case, Asocolflores notes, the Department would collapse both sales and constructed value data. As such, Asocolflores argues that both the related party definitions of section 771(13) and section 773(e)(4) need be satisfied before the Department may apply its collapsing analysis.

Asocolflores contends that Congress has clearly delineated the circumstances under which the Department may disregard transactions between companies. Respondents assert that the Department has no authority to look past the transfer price and use the seller's cost of production unless the relationship between buyer and seller meet the criteria set forth in section 773(e)(4). Asocolflores argues that the Department cannot circumvent Congress' intent and the express requirements of the statute by applying a different related party test.

Asocolflores agrees that, under 773b(e)(4), a few of the companies are related. Asocolflores also agrees that some of the companies are related under 771(13). However, Asocolflores contends that not *all* are related to each other, nor can the Department use the transitive principle to relate two parties simply because they are both related to a third party. Asocolflores contends that, in its analysis of the two sub-groups within the Queen's Flowers Group, the Department ignores the fact that there are several pairings of companies which do not meet the statutory criteria. Asocolflores argues that the Department may not collapse companies that are not related.

Asocolflores asserts that, notwithstanding the Department's failure to realize the threshold to its collapsing analysis has not been met, the Department erred in its conclusions for the five points of the collapsing test. Asocolflores agrees that some of the companies have common board members, but that this criterion is not satisfied for all companies.

According to Asocolflores, the Department's conclusion that shifting of production is possible if companies produce the same merchandise renders the test meaningless. Asocolflores argues that where companies produce the same merchandise, shifting of production is not possible unless the flower plant itself is uprooted and transferred to another location. In addition, respondents state that several of the firms do not produce the same or even subject merchandise.

Asocolflores goes on to state that, in analyzing whether the companies operate as separate and distinct entities, the Department ignored the fact that each company is run by its own independent manager and does not assist the other companies through loans or otherwise. Instead, Asocolflores asserts the Department focuses on sales of flowers between some of the companies. However, Asocolflores contends that, if the sales between companies were arm's-length transactions, then the Department must conclude that the companies operate as separate and distinct entities under section 773(e)(2). Moreover, Asocolflores notes that it is a common industry practice for flower companies to buy or sell small quantities of flowers to help fill an order. As an example, Asocolflores refers to Agroindustrial del RioFrio, which is a bouquet maker. As such, Asocolflores states, it must purchase a variety of flowers from other producers. Yet, according to Asocolflores, the intercompany transactions are few and far between and occur at prices above their cost of production, and all the purchased flowers were then exported to third countries, not the United States. Asocolflores maintains that the sales to the commonly owned importers are irrelevant to the Department's analysis of this criterion. Moreover, Asocolflores contends, the importers have developed an inventory system that precludes the potential for price manipulation. Asocolflores argues that the existence of common board members cannot be sufficient to prove that two respondents actually share marketing and sales information. Because interlocking boards of directors is a separate factor, it should not overlap with the Department's consideration of whether two respondent's share marketing and sales information.

Asocolflores points to the companies' statements that they do not share sales or marketing information or offices. Asocolflores maintains that, lacking evidence to the contrary, these statements preclude the Department from concluding otherwise. Asocolflores maintains that, although some of the companies in the group rent office space in a building that is owned by some of the companies in the group, neither the costs nor the spaces are shared, and each firm operates its own phone line.

Asocolflores disputes the Department's conclusions regarding the fact that there are intercompany transactions; in respondents' opinion this does not indicate that the companies are involved in each other's pricing and production decisions. Asocolflores also disagrees with the Department's conclusion that, because virtually all of the production of flowers is sold by the related importers, the companies are linked to one another.

In sum, Asocolflores maintains that, by collapsing the companies' cost and sales data, the Department achieves the very effect that it intends to avoid: the possibility of manipulation. Although the companies do not object to being collapsed *per se* (notwithstanding their belief that the Department has no legal or statutory authority to collapse any or all of the 20 companies), they take issue with the collapsing analysis because they fear that the Department may use the results of such analysis in determining whether the companies responded completely to the questionnaire.

The FTC maintains that Asocolflores is incorrect in asserting that section 771(13) is limited to identifying when an exporter and an importer are related. The FTC states that section 771(13) also defines relationships when the merchandise is sold to the United States ''by or for account of the exporter'' (19 C.F.R. § 353.41(c)) or when the merchandise is sold in the home market to or through a related party (19 C.F.R. § 353.45). In contrast, the FTC asserts, the definition in section 773(e)(4) only applies to producers who purchase major inputs from related suppliers.

Given the nature of the flower industry and the lack of markings identifying the producer, the FTC argues that the Department's concerns that a producer with a high margin may route its flowers through a related producer with a low margin should be heightened. The FTC believes that, considering this environment, coupled with the various transactions and relationships between the members of the Queen's Flowers Group, the Department appropriately collapsed the Group into a single entity.

Asocolflores rebuts that the FTC has not identified where in the statute or the questionnaire a company can look to determine which definition of related party the Department will apply for the purpose of collapsing. Moreover,

Asocolflores reiterates its assertion that 771(13) is limited to defining the relationship between the importer and the exporter, not between two exporters. Finally, Asocolflores contends that the FTC fails to point to record evidence that all of the companies are related under the statutory tests.

The FTC rebuts that 19 CFR 353.41(c) and 353.45 clearly direct the Department to section 771(13), while section 773(e)(4) applies only to the reporting of certain constructed value data. Moreover, petitioner asserts, it is the Department that determines whether to collapse related parties.

Department's Position: For these final reviews, we have continued to collapse the original eight members of the ''Queen's Flowers Group.'' Additionally, for the other twelve companies under consideration, we have determined that they should be collapsed with the original eight members of the Queen's Flowers Group.

As we have noted elsewhere, ''[i]t is the Department's long- standing practice to calculate a separate dumping margin for each manufacturer or exporter investigated.'' *Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 37154, 37159 (July 9, 1993) (*Japanese Steel*). Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely a part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department examines the question of whether reviewed companies ''constitute separate manufacturers or exporters for purposes of the dumping law.'' *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988). Where there is evidence indicating a significant potential for the manipulation of price and production, the Department will ''collapse'' related companies; that is, the Department will treat the companies as one entity for purposes of calculating the dumping margin. *See Nihon Cement Co., Ltd.* v. *United States*, Slip Op. 93–80 (CIT May 25, 1993).

To determine whether companies should be collapsed, the Department makes three inquiries. First, the Department examines whether the companies in question are related within the meaning of section 771(13) of the Act. *See Lighters From Thailand* at 14268 (declining to collapse non-related companies). Second, the Department examines whether the companies in question have similar production facilities, such that retooling would not be required to shift production from one company to another. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 42511, 42512 (Aug. 16, 1995) (*Steel from Canada*). Third, the Department examines whether there exists other evidence indicating a significant potential for the manipulation of price or production. The types of factors the Department examines include: (1) The level of common ownership; (2) the existence of interlocking officers or directors (*e.g.*, whether managerial employees or board members of one company sit on the board of directors of the other related parties); and (3) the existence of intertwined operations. ''The Department need not show all of these factors exist in order to collapse related entities, but only that the companies are sufficiently related to create the possibility of price manipulation.'' *Japanese Steel*.

In examining the questionnaire responses for several of the companies involved in these administrative reviews, we noticed the existence of numerous interrelationships (via ownership and otherwise). We asked for additional information concerning these relationships and, as a result, have concluded that these companies should be collapsed.

First, the companies within the Queen's Flowers Group are related to each other within the meaning of section 771(13) of the Act. *See* Memoranda From Michael F. Panfeld to Holly A. Kuga, dated August 3, 1995 and February 1, 1996. Second, these companies have similar production facilities. All of these companies produce flowers in a similar manner and, thus, the companies would not need to engage in retooling to shift production. Third, other proprietary evidence indicates that there is a significant potential for price or cost manipulation among these companies. In general, this additional evidence consists of: (1) The existence of interlocking managers, officers and directors; (2) the shipment of subject merchandise through common importers in the United States; (3) use of common office space and shared costs; and (4) intercompany transactions. *See* Memorandum from Michael F. Panfeld to File dated November 17, 1994, and Memorandum from Michael F. Panfeld to Holly A. Kuga dated February 1, 1996.

We disagree with Asocolflores' assertion that we applied the wrong statutory definition of related party in our analysis. Section 773(e)(4) pertains solely to determining the cost of inputs purchased from related parties in calculating constructed value. The definition of ''related party'' found in this provision is used for the purpose of disregarding certain related party transactions for inputs that are not at arm's length (773(e)(2)) and for determining whether a major input purchased from a related party was sold below cost (773(e)(3)). There is no explicit provision in the Act regarding whether companies should be considered as separate or as a single enterprise for margin calculation purposes. *See Roses from Ecuador* at 7040. However, it is the Department's practice to use section 771(13) in its collapsing analysis. This use of 771(13) is consistent with how the Department defines a related party for purposes of determining whether related party sales in the home market will be used for purposes of calculating FMV. *See* 19 CFR 353.45(a) (1994).

Further, contrary to Asocolflores' argument, the Department uses section 771(13) for purposes of collapsing in all cases, regardless of whether constructed value forms the basis of FMV. Thus, in both *Roses from Ecuador* and *Lighters*, the issue before the Department was not merely whether to collapse sales in the United States for the companies in question. Rather, the issue was whether to collapse the companies and treat them as one entity for all margin calculation purposes.

Asocolflores argues that some of the eight companies (as well as the additional twelve companies which the Department collapsed into the Queen's Flowers Group) have no common board members and, as such, the interlocking boards criterion was not satisfied. However, in examining this factor, we are looking at the *degree* of interlocking boards, not the existence of fully-integrated boards. As with many of the collapsing factors we consider, we examine the degree to which the companies are intertwined with each other. For the Queen's Flowers Group, we conclude that the number of interlocking boards, officers and managers is such that this factor supports a finding that the companies should be treated as a single entity.

Our finding that shifting of production could occur in the Queen's Flowers Group does not, as suggested by Asocolflores, mean that companies will ''dig up the plant and move it to another

farm.'' Rather, our concerns over shifting production refer to a longer period of time; thus, if Company A receives a lower margin than Company B, we are concerned that Company A would increase production of new flowers to take advantage of a lower margin while Company B would, over time, reduce production due to its higher margin. Alternatively, more of the production of Company A could be shifted to the U.S. market.

We agree that sales to a common importer do not indicate an intercompany transfer, *per se*. However, for proprietary reasons, we find that these sales indicate cooperation and intertwined operations between the companies in question. *See* Memorandum from Michael F. Panfeld to Holly Kuga dated February 1, 1996.

We also find that shared office space is an appropriate factor to consider in our analysis. While the sharing of office space does not, by itself, indicate that collapsing is appropriate, it does indicate cooperation and intertwined operations. Moreover, in addition to sharing facilities, some of the firms also shared costs associated with these facilities and reported these shared costs in their constructed value data. *See* Memorandum from Michael F. Panfeld to Holly A. Kuga dated February 1, 1996. Thus, it weighs in favor of a collapsing determination.

Finally, we agree with Asocolflores that we should not overlap factors in our collapsing analysis (*i.e.*, common board members and sharing of sales and marketing information). Notwithstanding this factor, our analysis of this criterion remains unchanged due to the reasons outlined in the two preceding paragraphs. Therefore, our conclusion to collapse these firms remains unchanged.

Our determination whether to collapse is based on the totality of the circumstances. *See Certain Corrosion-Resistant Steel* at 42512. We do not use bright-line tests in making this finding. Rather, we weigh the evidence before us to discern whether the companies are, in fact, separate entities or whether they are sufficiently intertwined as to properly be treated as a single enterprise to prevent evasion of the antidumping order via price or cost manipulation. Here, we find that such potential for manipulation exists for the group of 20 companies in the Queen's Flowers Group. Therefore, we have collapsed these companies and treated them as one entity for purposes of these final results.

Comment 27: Asocolflores asserts that the Department erroneously assigned an uncooperative BIA rate to eight companies in the Queen's Flowers Group. Asocolflores refers to its comments submitted on July 26, 1995 rebutting the 23 deficiencies outlined in the Department's preliminary analysis memo of December 5, 1994. Asocolflores asserts that those discrepancies fall into three broad categories: (1) Failures to provide factual information, (2) failures to identify related party transactions, and (3) failures to identify certain companies as related parties. Asocolflores maintains that, if the Department reexamines its analysis in light of the comments raised in its July 26, 1995 submission, it will find that virtually no discrepancies exist and all factual information is now on the record. Furthermore, Asocolflores contends that the Department has improperly scrutinized the relationships among the firms within the meaning of section 771(13). Instead, Asocolflores contends, the Department should apply section 773(e)(4). If the Department continues to assign the eight companies a BIA margin, Asocolflores contends that there is no basis for assigning a BIA margin to the 12 additional companies believed to have ''strong ties'' to the Queen's Flowers Group, maintaining that the Department may only assign a BIA margin to firms that fail to supply requested information. Asocolflores argues that the 12 companies fully responded to the questionnaires. Moreover, Asocolflores contends, several of the respondents either did not produce, export, buy, or sell subject merchandise or were not in existence during the PORs.

The FTC argues that the Department properly concluded that the Queen's Flowers Group significantly impeded its investigation. The FTC states that the Department's questionnaire was clear in its request to identify related parties. To the extent that the Queen's group failed to do so, the FTC contends, the group impeded the investigation. The FTC argues that respondents are presumed to have knowledge of Departmental practice and U.S. antidumping law, and the Department's questionnaire provided adequate guidance. The FTC also asserts that, to the extent that respondents were uncertain in their interpretation of the questionnaire, they had access to legal counsel and Department analysts. In the FTC's view, the Department attempted to determine the exact nature of the interrelationships among the group members through multiple deficiency letters, but respondents failed to respond appropriately and the Department correctly classified their responses as ''uncooperative.'' The FTC cites *Allied Signal* v. *United States*, 996 F.2d 1185, 1192 (Fed. Cir. 1993), *Chinsung Indus. Co.* v. *United States*, 705 F. Supp. 598, 600 (CIT 1989), *Pulton Chain Co., Inc.* v. *United States*, Slip Op. 93–202 (CIT October 18, 1993), and *Pistachio Group of Ass'n of Food Ind.* v. *United States*, 671 F. Supp. 31, 40 (CIT 1987), as support for the Department's application of BIA when the respondent deliberately withholds information, attempts to direct the investigation itself, or attempts to control the results of an investigation by supplying partial information. In this case, the FTC states, the Department found that the Queen's Flowers Group refused to cooperate or otherwise significantly impeded the investigation and correctly rejected the companies' responses, assigning an antidumping duty margin based on BIA. The FTC further asserts that Asocolflores is also incorrect in its claims that ''there were no transactions in Colombia implicating the U.S. price definition.'' The FTC asserts that when two parties are related, the knowledge test is irrelevant.

Asocolflores rebuts that the FTC offers no facts or analysis showing that the respondents failed to respond fully to the questionnaire, that the respondents should be faulted for not knowing which definition of related party to apply, or that all of the firms are related under either of the statutory definitions. Asocolflores reiterates that 771(13) only applies to the relationship between the importer and the exporter, not to the relationship between two exporters. Asocolflores argues that there were no sales in Colombia that would implicate USP. According to Asocolflores, the sales to Agroindustrial del RioFrio were destined for third countries, while, for the other transaction at issue, the selling company was not aware of the ultimate destination of the product. According to Asocolflores, the FTC cites no authority for its proposition that respondents are ''presumed to be aware of and comply with ITA practice and antidumping law.''

The FTC rebuts that the Department determines whether parties are related based on 771(13), and section 773(e)(4) applies only to the reporting of constructed value data. In responding to section A of the Department's questionnaire, the FTC contends, respondents cannot predict on what basis FMV will ultimately be calculated. In the FTC's view, the respondents' reporting on the basis of 773(e)(4) was at their own peril and the Department was correct in rejecting responses based on only one of the related party tests. The FTC asserts that, contrary to the

claims of Asocolflores, all copies of the questionnaire contained the same question requiring respondents to identify related parties in Section A and, in any case, it was incumbent upon respondents to request clarification. Finally, the FTC maintains that, if the Department assigns a BIA rate to the original eight members of the Queen's Flowers Group, it should also apply this rate to the 12 additional companies to the extent that they are collapsed into the group.

Department's Position: We have reexamined the record for these final results in light of the preceding comments, and have concluded that members of the Queen's Flowers Group failed to respond to certain questions and to provide certain factual information, improperly reported certain cost items and failed to change those items when requested to do so, and presented a pattern of insufficient responses, misleading information, and contradictory statements.

Specifically, Flores Canelon failed to distinguish between production expenses (which are not amortizable) and pre-production expenses (which are amortizable) of all types of cut flowers for January and February of 1992. Flores Canelon also failed to distinguish between production and pre-production expenses for farm overhead for the sixth and the seventh periods. Instead, Canelon improperly amortized all of these expenses. In this case, we notified the respondent in a supplemental questionnaire that there was a problem with its data and that failure to correct the error might result in our use of BIA. Flores Canelon made no changes in its data and provided only a brief narrative describing the period over which various assets were amortized. Flores Canelon referred the Department to attachments in its original response for further explanation. However, Flores Canelon failed to provide a narrative ''road map'' of these attachments in either of its responses, as requested by the questionnaire. Lacking a road map of Canelon's methodology, we attempted to determine on our own whether Canelon's methodology made sense. However, numerous discrepancies prevented this conclusion. See Memorandum from Laurie Parkhill to Holly A. Kuga dated June 28, 1996. Flores Canelon's failure to properly amortize its expenses is a serious deficiency. Because constructed value forms the basis of FMV in this case, incorrect amortization of costs will lead to too little or too much cost in constructed value and, thus, an inaccurate FMV. A similar deficiency has been found in the response of Queen's Flowers de Colombia.

In addition, we initiated a review in each of the three periods on Flores Generales. We received a response from ''Cultivos Generales (Flores Generales)'' for the fifth and the sixth review periods claiming ''no shipments,'' but no response for the seventh period. As such, we have assigned Flores Generales a rate based on BIA for the seventh period. While investigating the additional 12 companies in the Queen's Flowers Group, we asked Cultivos Generales if it was related to ''Cultivos Generales (Flores Generales).'' Cultivos Generales stated that it was the successor to Flores Generales, and, in effect, simply changed the name of the company, keeping all ownership intact. Had we known that these two entities were one and the same, we would not have sent a supplemental questionnaire to Cultivos Generales, because Flores Generales did not respond to our original questionnaire. Therefore, we are disregarding Cultivos Generales'' June 13, 1995, and July 28, 1995 submissions and are assigning it a BIA rate for the seventh POR as a successor to Flores Generales.

Other deficiencies exist that support our use of BIA. However, a discussion of these conditions is impossible in a public notice, due to their highly proprietary nature. For a discussion of these issues, see Memorandum from Laurie Parkhill to Holly A. Kuga dated June 28, 1996. In this memorandum, we reexamine the record in light of the FTC's and Asocolflores' comments and have revised our analysis accordingly. We concede that certain deficiencies identified in the December 5, 1994 analysis memorandum are no longer a factor in our analysis and that certain other deficiencies have been corrected. However, serious deficiencies remain in the responses of the Group and all information is not on the record as Asocolflores contends. In addition, new deficiencies have been identified. These deficiencies fall into two groups: those that we had identified previously in a supplemental questionnaire and for which an opportunity to correct the deficiency was afforded through supplemental responses, as well as deficiencies which we identified in supplemental responses solicited after the preliminary results. Most significant of these is that not all U.S. sales data and CV data exists on the record. These deficiencies are such that we are unable to use the responses of the Group for calculating margins. Therefore, for the final results of review, we have assigned the Queen's Flowers Group a BIA rate for each POR.

Moreover, because these deficiencies derive from a pattern of unresponsive and insufficient responses, we conclude that the Queen's Flowers Group impeded our investigation and consider the group to be uncooperative. Therefore, we are assigning the Queen's Flowers Group a first-tier BIA in accordance with *Allied Signal* v. *United States*, 996 F.2d 1185, 1192 (Fed. Cir. 1993), *Chinsung Indus. Co.* v. *United States*, 705 F. Supp. 598, 600 (CIT 1989), *Pulton Chain Co., Inc.* v. *United States*, Slip Op. 93–202 (CIT October 18, 1993), and *Pistachio Group of Ass'n of Food Ind.* v. *United States*, 671 F. Supp. 31, 40 (CIT 1987).

We agree with the FTC that the BIA rate should be applied to all 20 respondents. Because the Department relies on respondents to voluntarily identify their related parties, failure to do so, after repeated attempts to elicit this information, must be seen as impeding our investigation. Moreover, post-preliminary cooperation by members of the group for which we did not initiate reviews does not override previous deficiencies by the initiated members in this regard. In this case, we elicited post-preliminary ownership information to allow previously uninitiated companies an opportunity to provide evidence that they should not be collapsed with the Queen's Flowers Group, since, to do otherwise would deny these firms due process. However, these firms provided evidence that they were related and intertwined to the extent that collapsing was warranted. In addition, they provided additional evidence of links among the original eight members. Therefore, although these firms cooperated after the preliminary results, this cooperation only resulted after we preliminarily found the Queen's Flowers Group, as a whole, to be uncooperative and assigned it a margin based on first-tier BIA. For these final results, we, therefore, are applying the first-tier BIA margin to all entities collapsed within the group.

Comment 28: Asocolflores asserts that the Department lacks a factual and a legal basis for collapsing the Santa Helena Group of companies and the Florex Group of companies. Asocolflores contends that, before the Department can consider collapsing two companies, it must first show that they are related companies. Asocolflores maintains that, when FMV is based upon constructed value and the Department is considering whether to collapse sales as well as *costs*, then the related party definition in section 771(13) and the definition contained in 773(e)(4) must be satisfied for parties to be considered related. Asocolflores

maintains that the relationships between these two groups fail to meet either test. Asocolflores proposes that the Department establish a higher threshold for collapsing related parties in cases where the relationships are tenuous at best. Notwithstanding this, Asocolflores argues that the Department wrongly concluded that the five criteria were satisfied in its collapsing analysis. Asocolflores asserts that the record lacks evidence that controverts the two groups' certified statements that they operate as separate and independent entities. Asocolflores argues that the existence of common board members cannot be sufficient to prove that two respondents actually share marketing and sales information. Because interlocking boards of directors is a separate factor, it should not overlap with the Department's consideration of whether two respondent's share marketing and sales information. Moreover, Asocolflores asserts the high margins assigned to the Santa Helena Group (see the following comment) and weighted into the Florex Group's low margins result in a significant deposit rate for the Florex Group, which represents a manifest injustice. Finally, Asocolflores maintains that, if the Department finds that the two groups should remain collapsed in its final results, it should assign separate deposit rates for each group because one company in the Santa Helena Group no longer has any ties to firms in the Florex group.

The FTC rebuts that section 773(e)(4) applies when reporting constructed value and does not preclude collapsing for purposes of calculating a weighted-average margin for which section 771(13) is the applicable section of the statute. The FTC contends that all five criteria of the collapsing test have been met and, in particular, the Department's finding that the respondents produce the same merchandise, engaged in intercompany transactions, and have already shifted production is sufficient cause for alarm. Moreover, FTC points to the fact that the questionnaire responses in these reviews were submitted after the Department had concluded that these companies were sufficiently related to be collapsed in the *Fourth Review*. According to the FTC, any assumptions the Florex Group made regarding the Santa Helena Group were thus made at the Group's own peril. Finally, the FTC argues that to assign separate deposit rates for the Santa Helena Group and the Florex Group would undermine the purpose of collapsing related parties. If the Department considers establishing separate deposit rates, the FTC urges the issuance of supplemental questionnaires to determine whether any new relationships have formed in the interim.

Department's Position: For purposes of these final results, we have collapsed the Florex Group and the Santa Helena Group. *See* generally our response to comment 26 for the criteria used in this analysis.

Respondent's claims to the contrary notwithstanding, we find that the evidence supports the conclusion that the Florex and Santa Helena Groups are intertwined to a degree that warrants treating them as a single enterprise. First, we find that the Florex Group and the Santa Helena Group are related to each other within the meaning of section 771(13) of the Act. *See* Memorandum From Michael F. Panfeld to Holly Kuga, dated February 1, 1996. Second, these groups have similar production facilities. Both groups produce flowers in a similar manner and, thus, the groups would not need to engage in retooling to shift production. Third, there exists other proprietary evidence indicating that there is a significant potential for price or cost manipulation among these groups. In general, this additional evidence consists of: (1) The existence of interlocking managers, officers and directors; (2) the shipment of subject merchandise through a common importer in the United States; and (3) intercompany transactions. *See* Memoranda to the File dated November 15, and November 21, 1994, and the Memorandum from Michael F. Panfeld to Holly A. Kuga dated February 1, 1996.

We agree with Asocolflores that we should not overlap factors in our collapsing analysis (*i.e.*, common board members and sharing of sales and marketing information). We also agree, after review of respondents' comments, that while shifting of production has not yet occurred, the potential to shift production still remains. Notwithstanding these factors, our analysis of these criteria remains unchanged due to the additional reasons outlined in the Memoranda to the File dated November 15, and November 21, 1994, and the Memorandum from Michael F. Panfeld to Holly A. Kuga dated February 1, 1996.

Finally, we have determined that the factual information regarding the current legal status and ownership of firms in the Santa Helena Group were untimely submitted. *See* 19 CFR 353.31(a)(1)(ii) (1994). We have removed this information from the record. As the record before us indicates that the Florex Group and the Santa Helena Group should be collapsed, we have assigned the collapsed enterprise a combined cash deposit rate for future entries.

Comment 29: Asocolflores asserts that the Department unfairly assigned a cooperative BIA rate to the Santa Helena Group, given that Santa Helena worked to the best of its ability in responding to the questionnaire, it had limited resources and little experience in the review process. Furthermore, Asocolflores contends that Santa Helena corrected its acknowledged errors in its crop adjustment methodology and requests that the Department use the corrected information in its final results.

The FTC argues that, at some point, the Department must close the administrative record. In the FTC's view, Santa Helena had an adequate opportunity to correct its submission and allowing Santa Helena to revise its response after the preliminary results would invite a wholesale request by other respondents to correct their responses and deny interested parties the opportunity to comment or conduct verification of the new data. As support, the FTC cites *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d at 1571, *Ansaldo Componenti, S.p.A.* v. *United States*, 628 F. Supp. 198, 204 (CIT 1986), and *Mantex, Inc.* v. *United States*, 841 F. Supp. 1290, 1310 (CIT 1993). Finally, the FTC notes that Santa Helena had both experienced counsel and experience in two previous administrative reviews.

Asocolflores rebuts that the Department chose to reopen the administrative record with its supplemental questionnaire to the Florex Group (which the Department had collapsed with the Santa Helena Group). Contrary to the FTC's concerns regarding the submission of post-preliminary corrections, Asocolflores maintains that acceptance of Santa Helena's data would not create a general precedent. Asocolflores also contends that the Department requested inflationary adjustments from all respondents, not just Santa Helena. Finally, Asocolflores states that Santa Helena's response was prepared by a new company, which did not have previous experience in the review process.

Department's Position: We agree with the FTC that Santa Helena's submission of corrected data is untimely and have not considered the data for these final results. Although supplemental questionnaires were issued to certain respondents after the preliminary results, they were not issued to companies that were preliminarily

assigned a BIA margin, such as Santa Helena. Prior to issuance of the preliminary results, we notified Santa Helena that its data diskettes were being rejected due to several problems in a supplemental questionnaire, and we identified a critical flaw: the integrity of protected formulas in its diskette had been compromised, which indicated tampering with our required format. *See* letter to Santa Helena Group from Division Director dated August 15, 1994.

With regards to the faulty crop adjustment methodology, we agree with the FTC that Santa Helena had ample opportunity to correct its data. We note that we notified a large number of respondents that there were problems with their crop adjustment methodologies prior to issuance of the preliminary results. We assigned a second-tier BIA rate to all firms that failed to correct their data or to provide narrative explanations, as Santa Helena failed to do. Thus, our treatment of Santa Helena was not unfair.

Finally, we have found that we initiated reviews of a member of the Florex Group, S.B. Talee de Colombia (albeit with a minor spelling error), it received our questionnaire for the seventh POR, and it failed to respond to that questionnaire. Moreover, in comments filed on April 12, 1995, Flores de Salitre states that S.B. Talee de Colombia did have some U.S. sales during the seventh POR. However, these sales were not reported by any member of the Florex group. For this, and the aforementioned reasons, we continue to assign the Santa Helena sub-group (of the Florex Group) a margin based on cooperative BIA.

Comment 30: Jardines de los Andes argues that it should be withdrawn from the preliminary ''all others'' rate since it has been revoked under the Flores Colombianas Group.

Department's Position: We agree that Jardines de los Andes has been revoked and that the Department inadvertently assigned it the all others rate. *See Fourth Review*. Therefore, there are no final results for this company for these review periods.

Comment 31: Asocolflores asserts that the Department erred when it combined the sales and cost data, for sales of chrysanthemums, of Cultivos Miramonte and Flores Mocari to calculate a weighted-average margin for the Miramonte Group. Asocolflores asserts that Cultivos Miramonte reported its data on a per-bunch basis, while Flores Mocari reported its data on a per-stem basis. According to Asocolflores, this severely understates per-unit U.S. sales prices. Asocolflores asks the Department to convert Flores Mocari's data to bunches in its final results. Asocolflores further requests that the Department recheck Cultivos Miramonte's packing expenses and reverse the adjustment the Department made to these expenses for the preliminary results.

The FTC requests that the Department adjust Cultivos Miramonte's data by converting it to a per-stem basis.

Department's Position: We agree with Asocolflores that we improperly combined the sales and cost data for one flower type in the fifth review. Since converting stems to bunches, as opposed to the reverse, would not alter the results of our margin calculations, we chose the methodology with the least amount of burden. Therefore, for these final results, we have converted Cultivos Miramonte's data from a per-bunch basis to a per-stem basis as the FTC suggested. In addition, we have rechecked the packing expenses and found no flaws in our calculations.

Comment 32: Asocolflores asserts that Flores Calima (Calima) and Flores el Roble (Roble) are not successors to Flores el Majui and Sunset Farms, respectively. Therefore, Asocolflores contends that Calima and Roble should not be assigned a deposit rate based on margins assigned to Flores el Mujui and Sunset Farms. Asocolflores cites the Department's four-point successorship test outlined in *Brass Sheet and Strip: Final Results of Antidumping Duty Administrative Review* 57 FR 20460 (May 13, 1992) (*Brass Sheet*), and suggests that an examination of the evidence as it relates to these firms demonstrates that none of these four points has been met.

The FTC rebuts that neither Majui nor Sunset Farms submitted timely information. Thus, the FTC contends, the Department does not have sufficient information to apply the successorship test.

Department's Position: We agree with the FTC. Although we have a response from Calima, we have no response from Majui. Similarly, we have a response from Roble, but not from Sunset Farms. Because we initiated a review for the seventh POR for Majui and Sunset Farms, and did not receive a response from these firms, we have assigned Majui and Sunset Farms a margin based on first-tier BIA. *See* our response to Comments 55 and 57. Calima and Roble failed to notify us before we published our preliminary results that, during the seventh POR, they had purchased the assets of these firms. Since issuance of the preliminary results, we solicited and received a response from Calima and Roble. The responses demonstrated that they purchased the assets of Majui and Sunset Farms. However, at this late stage in the proceeding, we were not requesting information from Calima and Roble because they were successors to Majui and Sunset Farms; rather, we were soliciting their responses to determine the nature of their relationships with the Queen's Flowers Group. *See* our response to Comments 26 and 27.

In the absence of record evidence to the contrary, we must assume that the firms' operations were ''essentially similar.'' To conclude otherwise would reward successor companies by absolving them from their inherited antidumping duty liabilities and encourage companies that have been sold not to respond to our requests for information. Therefore, independent of our decision to assign BIA to these firms as a result of their inclusion in the Queen's Flowers Group, we have assigned a margin based on BIA to Calima and Roble as individual companies, due to the failure to respond to our questionnaire. We note that this analysis was not a factor we considered in our analysis of whether to assign margins based on BIA to the Queen's Flowers Group.

Comment 33: Flores San Juan argues that the Department incorrectly limited the amount of the firm's interest income allowed as an offset to constructed value to the amount of interest expense included in constructed value. Flores San Juan contends that all of its income is attributable to short-term working capital investments related to production; therefore, the respondent contends, the Department's policy directs that all such income qualifies for inclusion in the offset to the interest expense. However, respondent states, because the firm is largely capitalized through shareholder equity rather than with debt, it has only minimal financial expenses. Consequently, in Flores San Juan's view, the Department's ''cap'' is unfair because the firm does not receive as much benefit as a company that chooses to capitalize largely through short-term debt. Flores San Juan further states that there is no rational basis for treating the working capital income of one producer differently from the working capital income of another producer solely because of the way in which the companies are capitalized. Flores San Juan argues in addition that, because its interest income is directly related to production, the firm's true cost of production in fact is lowered by its interest income. Flores San Juan concludes that it is appropriate for the Department to allow the full offset for interest income and not limit it to the

level of interest expenses respondent incurred.

Department's Position: Consistent with our past practice, we have permitted Flores San Juan to offset its interest expense with short-term interest income related to operations, but only to the extent that interest expenses are incurred by Flores San Juan. As part of general expenses for constructed value, we include an amount for interest expense. It is the Department's normal practice to allow short-term interest income to offset financing costs only up to the amount of such financing costs. *See, e.g., Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review*, 60 FR 2378, 2379 (Jan. 9, 1995). The Act specifically requires that we include various costs, such as material and fabrication, in calculating constructed value. Were we to deduct the full amount of claimed interest income, we would not only offset interest expense but we would effectively be offsetting material and fabrication costs as well. Therefore, to avoid reducing costs not related to interest expenses, we have capped the deduction for interest income at the level of interest expense. *See* section 773(e)(1)(A) of the Act.

Comment 34: Flores San Juan and the Bojaca Group disagree with the Department's use of the higher figure to reconcile discrepancies in Table 1 and 2 of their responses with respect to packing and indirect selling expenses.

Flores San Juan claims that it erroneously reported packing expenses for all markets instead of packing expenses for the U.S. market in Table 2 of its responses. In Table 1 of its response, Flores San Juan contends, it reported another lower figure which it claims to be the correct figure. Flores San Juan concludes that the Department should reconcile the packing expenses in Tables 1 and 2 by including in Table 2 only those packing expenses respondent reported in Table 1.

The Bojaca Group claims that the values for packing expense and indirect selling expense reported in Table 1 of its response are the correct values as opposed to the values reported in Table 2 which the Department used to reconcile the two tables. Respondent suggests that the Department use the values in Table 1 to reconcile the packing expenses and indirect selling expenses in tables 1 and 2.

Department's Position: Since we received both Flores San Juan and the Bojaca Group's requests that we correct their responses after publication of our preliminary results and the alleged errors were not apparent from the record in either case, we have applied the six criteria explained in the **BACKGROUND** section of this notice. We find that both respondents failed to meet one of these criteria in that they did not provide supporting documentation for the alleged clerical errors. Therefore, we have not made the changes requested.

Comment 35: Agromonte Ltda. claims that the Department appears to have deleted sales volumes sold to customer 01 for standard carnations in the fifth review for the months of March, April, and May 1991 and requests that the Department ensure that its calculations reflect these sales.

Department's Position: We agree that the sales volumes were missing from our preliminary calculations for the particular months stated above for importer 01. Our review of the record indicates that the data were missing on both sets of diskettes respondent submitted to the Department on July 8, 1994, but the sales volumes did appear in the Table 1 printout for importer 01 in the company's sections C and D questionnaire response. Therefore, we have corrected the error using the information provided in the response and recalculated Agromonte's weighted-average margin.

Comment 36: Agromonte Ltda. states that the preliminary results list ''Flores Agromonte'' as a company the Department could not locate and as to which the ''all other'' rate would apply. Agromonte Ltda. states that, to the best of its knowledge, there is no such company as ''Flores Agromonte.'' Therefore, to avoid any possible confusion at Customs, Agromonte Ltda. requests that the Department terminate its initiation of a review of ''Flores Agromonte.''

The FTC argues that Asocolflores certified to the existence of a Flores Agromonte and an Agromonte Ltda. in a 1989 submission to the CIT. *See* FTC Public Request for Review (1993–94) at Ex. 2 (March 31, 1994). Because there is no information confirming that Flores Agromonte does not exist, the FTC contends that the Department should continue to assign the company a rate based on BIA in its final results.

Department's Position: Because Asocolflores certified to the existence of a Flores Agromonte in the above-referenced document, and there is no conclusive evidence on the record indicating that Flores Agromonte does not exist, we will instruct Customs to collect cash deposits on imports from Flores Agromonte equal to the ''all others'' rate of 3.10 percent from the LTFV investigation (not BIA as stated by the FTC in its comment) because we could not locate the firm.

Comment 37: Flores las Caicas states that the Department's disclosure memorandum indicates that the packing and indirect selling expenses it reported in Table 2 were higher than those it reported in Table 1. Flores las Caicas notes that the problem did exist on an earlier submission but was corrected in a supplemental submission dated August 30, 1994. Flores las Caicas believes that the Department analyzed the wrong diskettes and requests that the Department base its final results on the data submitted on August 30, 1994.

The FTC argues that Flores las Caicas did not alert the Department of the modification until July 21, 1995. *See* Asocolflores Public Case Brief at 2. Therefore, the FTC contends that the Department is under no obligation to modify its preliminary results.

Department's Position: We requested supplemental information from Flores las Caicas, and it responded in a timely manner with a supplemental response accompanied by revised diskettes. Although we neglected to use the revised diskettes in our analysis for the preliminary results, we have based our final results on the data Flores las Caicas submitted on the revised diskettes.

Comment 38: Flores de Suesca disagrees with the Department's preliminary decision to apply a non-cooperative, first-tier BIA rate to its transactions because it did not respond to the Department's questionnaire. Flores de Suesca argues that it did respond as part of the Toto Flowers Group, and that the Department published a preliminary rate for the group, which included Flores de Suesca.

The FTC contends that Asocolflores certified to the CIT in 1989 that there were two companies named Flores de Suesca and Flores Suesca (FTC Public Request for Review (1993–94)). Therefore, to the extent that the Department located a company, Flores Suesca, that did not respond to the Department's questionnaire, the FTC believes that the preliminary results were correct.

Department's Position: Flores de Suesca responded to the Department's questionnaire as part of the Toto Flowers Group. Our record indicates that Flores Suesca is a variant name for Flores de Suesca, as reflected in our preliminary results notice. We inadvertently assigned Flores de Suesca a BIA rate in the preliminary results as an individual company, as well as a calculated rate for the Toto Flowers Group. In these final results, we calculated a rate for the Toto Flowers Group which includes Flores de Suesca.

Comment 39: Flores de la Sabana S.A. argues that the Department should not assign BIA to Sabana Flowers. Flores de la Sabana claims that there is no firm named ''Sabana Flowers.'' Flores de la Sabana claims that it received the questionnaire intended for Sabana Flowers and that it acknowledged the receipt by facsimile message. Flores de la Sabana also claims that in that message it noted that ''Sabana Flowers'' does not exist. Flores de la Sabana notes that it responded to the Department's requests for information and that the Department calculated margins for it. Flores de la Sabana requests, therefore, that the Department remove ''Sabana Flowers'' from its list of BIA companies so as to avoid any potential confusion with Flores de la Sabana or Flores de la Sabana's related importer, Sabana Farms.

The FTC argues that Asocolflores submitted a certified list of producers to the CIT that included both Flores de la Sabana and Sabana Flowers. The FTC urges the Department to continue to assign Sabana Flowers a BIA rate in its final results absent information that this company no longer exists.

Department's Position: We sent a questionnaire to both Flores de la Sabana and Sabana Flowers. The address that we used to send the questionnaires to Sabana Flowers differs from the address in the response and on the letterhead of Flores de la Sabana. From the international courier, we received a confirmation of receipt of the questionnaire at the address we used for Sabana Flowers. *See* Memorandum to File by Mark Ross dated November 8, 1995. In addition, Asocolflores provided a certified list of producers to the CIT that lists Sabana Flowers as a Colombian flower producer. Therefore, because there is no conclusive evidence on the record indicating that Sabana Flowers does not exist, we have continued to treat Flores de la Sabana and Sabana Flowers as two separate existing entities, and we have applied a first-tier BIA rate to imports into the United States by Sabana Flowers during the PORs and for future deposits of antidumping duties.

Comment 40: Flores de la Sabana argues that the rate applicable to Flores de la Sabana should also apply to Roselandia S.A. Flores de la Sabana contends that it responded as the Sabana Group, consisting of Roselandia S.A. and Flores de la Sabana. Flores de la Sabana alleges that, while Roselandia did not sell subject merchandise, it produces some carnations and cuttings which it sold to Flores de la Sabana. Flores de la Sabana also expresses concern that the Department did not use its consolidated response, and asks that the Department use the consolidated tables Flores de la Sabana submitted.

The FTC agrees that, to the extent that the Department agrees that these companies should be collapsed, the Department should correct the errors described above. The FTC notes, however, that respondents may not unilaterally consolidate data.

Department's Position: We have reviewed the record and conclude that Flores de la Sabana and Roselandia S.A. are related and should have been collapsed. While we used the consolidated tables submitted by Flores de la Sabana in our preliminary results, we published the rate as if it were applicable only to Flores de la Sabana and listed Roselandia S.A. as a non-shipper during the PORs. We should have listed both companies under the entity ''Sabana Group.'' We have corrected this oversight for the final results.

Comment 41: Flores de la Sabana argues that the Department should not have disallowed discounts received from suppliers in its preliminary results because they were reported as ''other financial income'' in the spreadsheet. Flores de la Sabana contends that, at a minimum, the Department should allow the discounts as an offset to cost somewhere in the spreadsheet, if not necessarily as an offset to financial expense, or else costs will be overstated.

The FTC argues that the Department should reject this adjustment if Flores de la Sabana has not established that the discount is directly related to specific material or service purchases.

Department's Position: Flores de la Sabana received the discounts it reported on purchases of supplies. However, Flores de la Sabana did not submit, either in the spreadsheet or in its narrative responses, the requisite information for us to properly assign these discounts to costs of the applicable flower types. In fact, we cannot determine from the record whether respondent included discounts on supplies applicable to non-subject merchandise in the figure. In addition, we do not apply these discounts as an offset to financial expense because they are not financial income. Therefore, we have not accounted for these discounts in our calculations for the final results.

Comment 42: The Claveles Colombianas Group (Clavecol) argues that the Department should not have replaced negative values reported in the company's section D response with zero values. Clavecol explains that some numbers may be negative because it made accounting adjustments in one month to reclassify into the appropriate accounts amounts it incorrectly classified in previous months. Also, Clavecol explains, the same numbers in the ''Crop Adjustment'' section of its response may be negative because the firm used this section to calculate the net adjustment to actual monthly expenses fully reported in other lines of the response. Clavecol contends that the Department never asked for clarification of why negative values occurred. Clavecol argues that similar circumstances pertained in the LTFV investigation of *Roses*, and that the Department verified such negative values as correct in that investigation. Clavecol asks that the Department reverse its decision as to the treatment of negative values in the spreadsheet because the Department's current practice, as applied to Clavecol, overstates Clavecol's costs.

The FTC argues that the Department should continue to re-classify negative values as zero. The FTC contends that allowing respondents to report accounting adjustments in this manner would invite manipulation of data. The FTC further claims that verification in another case should not affect the Department's analysis in this case.

Department's Position: We disagree with Clavecol that we should not have changed the negative values to zero. Although Clavecol submitted a narrative explanation of the negative numbers in its post-preliminary supplemental response, there was no evidence on the record that supports its explanation. *See* our response to comment 34, above.

With regard to the negative numbers that allegedly are the result of accounting adjustments, we cannot determine, based on the record, whether Clavecol's explanations are reasonable or accurate. Clavecol's original response describes year-end adjustments that appear to be made in order to report the actual expenses (*see* Clavecol's August 3, 1994 response to section D at 2), though no reference is made to negative cost. We examined the response with regard to the negative numbers, and it appears that some of the negative numbers are year-end adjustments, but these figures are not fully explained. Also, we could not discern any pattern in the placement of the negative numbers that would allow us to determine the nature of the negative numbers.

Finally, we cannot tell whether the adjustments Clavecol describes are limited to either the same POR or the same types of expenses. We are concerned that costs might be shifted from materials, labor, and overhead expenses to general and administrative expenses, or that costs might be shifted

from one month to another. Although we use an annually-averaged constructed value as FMV, the shifting of costs from one month to another implied by these ''year-end adjustments'' may distort costs because of the high degree of fluctuation in the peso-to-dollar exchange rate.

We agree with the FTC that verifications in other cases have no bearing on determining whether a response is reasonable in the instant reviews. Therefore, in the absence of record evidence indicating otherwise, and because we are concerned about the possibility of manipulation of the firm's cost response implied in the negative numbers, we have converted the negative numbers allegedly due to accounting adjustments reported in Clavecol's response to zeroes for the purpose of calculating the margins.

With regard to the negative numbers we found in Clavecol's crop adjustment methodology, we found that Clavecol's original submission adequately described its methodology. We also found that, although Clavecol's methodology deviated from the format we indicated in our questionnaire, it produces the same results and does not distort costs. Therefore, we have used Clavecol's original cost response with respect to its crop adjustment methodology.

Comment 43: The Santa Rosa Group (Santa Rosa) claims that the Department improperly disallowed the amount of amortized pre-production expenses carried forward to future periods after the close of each POR. Santa Rosa contends that, although it did not use the methodology the Department set forth in the questionnaire, its methodology achieved the same results.

For direct materials costs, Santa Rosa claims that it reported all costs incurred in each review period, albeit in a different place than the Department requested. Santa Rosa claims that it properly reported the amounts attributable to future periods, resulting in a net adjustment to period expenses for amortization rather than the total pre-production expenses. Santa Rosa explains that it used a similar procedure for direct labor and overhead farm costs.

Santa Rosa asks that, if the Department disallows the amounts carried forward to future years, that it also eliminate from current pre-production costs all such costs respondent carried forward from prior years, as reported in specific spreadsheet lines. Santa Rosa contends that it would be improper to disallow only one part of the amortization of pre-production expenses.

The FTC argues that Santa Rosa admitted to deviating from the reporting format in the questionnaire. Thus, the FTC contends, the Department's adjustment to the response was justified because Santa Rosa did not provide the information in the format requested.

Department's Position: We reexamined Santa Rosa's submissions and found that Santa Rosa's original submission and supplemental response adequately described its pre-production cost methodology. We also found that, although Santa Rosa's methodology deviated from the format we identified in our supplemental questionnaire, it produces the same results and does not distort costs. Therefore, we have used Santa Rosa's original cost response with respect to its crop adjustment methodology.

Comment 44: Santa Rosa argues that the Department should not list Floricola la Ramada as a company which will receive the ''all others'' rate. Santa Rosa states that Floricola la Ramada is a member of the Santa Rosa Group and was listed as such in the Department's list of rates in the preliminary results.

Department's Position: We agree with Santa Rosa that Floricola la Ramada is a member of the Santa Rosa Group and we have corrected this oversight for these final results.

Comment 45: The AGA Group and the FTC claim that the Department erroneously published separate rates for Agricola Benilda.

Department's Position: We disagree with both the AGA Group and the FTC. Because Agricola Benilda was not part of the AGA Group until the 7th review period we have listed Agricola Benilda twice. For the 5th and 6th PORs, Agricola Benilda receives a separate rate from the AGA Group because it was not a member of the AGA group. During the 7th POR, Agricola Benilda was a member of the AGA group, so we have collapsed it with the AGA group for that period. Therefore, duties for the 7th POR and future cash deposits for Agricola Benilda will be at the AGA Group rate.

Comment 46: The Bojaca Group (Bojaca) argues that the Department erroneously calculated and allocated net financing costs for the group, which consists of three companies. Bojaca claims that the Department erred in attempting to implement its practice of using group-wide financing expenses on two accounts. First, Bojaca states that the Department took group-wide financing expenses from calendar-year-based financial statements for the three companies and used these in the constructed value calculation, which is based on a March-to-February period. Second, Bojaca contends that the Department overallocated these financial expenses to subject merchandise because it did not have accurate total sales data. Bojaca argues that the Department should either use data provided by the group in its inflation-adjustment response submitted after the preliminary results of review, or rely upon the Universal Flowers data Bojaca originally submitted.

The FTC counters that, because Bojaca did not report its financial expenses as required in the questionnaire, the Department is not required to use the unsolicited, post-preliminary, corrected data Bojaca submitted and, therefore, the Department is justified in calculating financial expenses on the basis of BIA.

Department's Position: We agree with the FTC. Bojaca failed to supply the group-wide sales revenue and financing expense data in its original response. We requested that Bojaca correct its sales revenue and financial expense data in a supplemental questionnaire, and, again, Bojaca failed to do so. Under these circumstances, we relied on the sales revenue and financial expenses from the financial statements of the three companies as BIA.

Comment 47: Flores el Zorro disagrees with the Department's application of total BIA to its transactions. Respondent contends that all of the errors in its response are clerical in nature and can be corrected by the Department without the submission of new information. Flores el Zorro describes how nine errors noted by the Department can be corrected for the calculation of margins. Flores el Zorro requests that the Department accept its explanation and calculate weighted-average margins for its sales.

Department's Position: We identified several errors in Flores el Zorro's responses and applied BIA in the preliminary results. Those errors were as follows: (1) The misidentification of sales as ESP sales; (2) exceptionally high indirect selling expense amounts for U.S. sales; (3) inconsistencies in the unit numbers of U.S. exports and total exports; (4) reporting direct selling expenses in the constructed value spreadsheet, but reporting no direct selling expenses in the U.S. sales spreadsheet; (5) reporting indirect selling expenses in the U.S. sales spreadsheet, but not in the constructed value spreadsheet; (6) an inconsistency between reported U.S. packing expenses in the sales spreadsheets and the constructed value spreadsheets; (7) the reporting of different interest income and expense amounts in each month of the reviews for each flower type; (8) an

inadequate explanation of how interest income was related to production; and (9) the overstatement of the crop adjustment expense amounts.

Because we received Flores el Zorro's request that we correct its response after publication of our preliminary results and the alleged error was not apparent from the record, we have applied the six criteria explained in the **BACKGROUND** section of this notice. We find that Flores el Zorro met all of these criteria for the first, second, third, fourth, fifth, and seventh errors and have corrected these errors for the final results, resulting in recalculated margins for Flores el Zorro. However, Flores el Zorro failed to meet one of these criteria for the sixth, eighth, and ninth errors in that it did not provide supporting documentation for the alleged clerical errors. Therefore, we have not made the changes requested by Flores el Zorro for these alleged errors.

Comment 48: The Tropicales Group contends that several errors in its response, which caused the Department to apply adverse inferences in the preliminary results, were the result of transcription errors and that the correct information is evident on the record. According to respondent, the first error involves the amortization costs carried forward in the amortization tables, the second error is an overstatement of packing expense amounts for the 7th review, and the third error is a discrepancy in the amounts reported for indirect selling expenses on two tables for the 7th review. The Tropicales Group states that the Department should use the lesser of the two amounts because that amount matches the amount in the firm's accounting records.

Department's Position: Because we received the Tropicales Group's request that we correct its response after publication of our preliminary results and the alleged error was not apparent from the record, we have applied the six criteria explained in the **BACKGROUND** section of this notice. We find that the Tropicales Group met all of these criteria for the first two errors and have corrected these errors for the final results and recalculated the margin for the Tropicales Group.

However, the Tropicales Group failed to meet one of these criteria for the third error in that it did not provide supporting documentation for the alleged clerical error. Therefore, we have not made the change requested by the Tropicales Group for this alleged error.

Comment 49: Flores Tropicales expresses concern that the Department is considering collapsing it with another respondent in the 7th review period. Respondent asserts that it and the other firm are not agents or principals of each other, neither owns, directly or indirectly, any interest in the other, and there are no persons that own any percentage in both firms. Consequently, Flores Tropicales argues that the two companies are not related and that the Department should not collapse the two firms for its analysis.

Department's Position: Section 771(13) of the Act establishes a standard for relationship based on association, ownership or control. The Department agrees that the Tropicales Group's relationship with a second firm during the 7th POR does not meet the criteria for relatedness primarily because this relationship existed only in the last two months of the seventh POR. Therefore, for the purposes of these reviews we have not collapsed the two firms.

Comment 50: Iturrama contends that it should not receive BIA for failing to itemize the costs it reported in its constructed value table and failing to provide a particular grower's report, as requested by the Department in a supplemental questionnaire. Iturrama asserts that it did not understand the reasons why the Department asked certain questions and, therefore, did not fully explain why it could not provide the requested information. With regard to Iturrama's failure to itemize costs reported in its constructed value table, Iturrama claims that the company's accounting system simply does not permit the cost itemization the Department requested. Iturrama provided a sample of its trial balance and an auxiliary ledger to show that the total costs reported in the company's financial records reconcile to the total costs figures reported in the response. With regard to the grower's report, Iturrama argues that it simply did not have it, and, therefore, there is no justification for assigning BIA. Iturrama concludes that BIA cannot lawfully be applied under the circumstances, and requests that the Department use its data in the final results.

The FTC argues that, if the Department finds that Iturrama's explanations justify reconsideration of its response, the Department should request an additional sampling of grower's reports to confirm the accuracy of Iturrama's reported U.S. sales.

Department's Position: Because Iturrama does not have the requested grower's report and does not maintain the level of cost detail in its normal books and records that would be required to comply with our request, we have reconsidered our decision to apply BIA rates to the firm. For these final results, we have used its response in calculating margins. We have not requested an additional sampling of grower's reports because we are satisfied that the company's U.S. sales are accurately reported.

Comment 51: Agricola Acevedo claims that it incorrectly reported total packing expenses for all markets instead of U.S. packing expenses in its constructed value tables for the 5th, 6th, and 7th reviews. However, Agricola Acevedo asserts that, with respect to the 5th and 6th reviews, it reported the correct U.S. packing expenses in its U.S. price table.

Department's Position: Because Agricola Acevedo brought this error to our attention after publication of our preliminary results and the alleged error is not apparent from the record, we have applied the six criteria explained in the **BACKGROUND** section of this notice. We find that Agricola Acevedo failed to meet one of these criteria. Agricola Acevedo did not provide supporting documentation for the alleged error. Therefore, we have not corrected Agricola Acevedo's submission. (*See* the March 30, 1995, Memorandum to the File for an explanation of the U.S. packing expenses we used for Agricola Acevedo in the final results.)

Comment 52: Agricola Acevedo contends that the Department incorrectly disallowed financial income as an offset to financial expenses. Agricola Acevedo explains that the claimed financial income consists of short-term interest income from deposits of working capital and income received from the sale of scrap plastic and wood from fixed assets, and that it identified these items individually in its response to the Department's questionnaire. Agricola Acevedo requests that the Department change its calculations accordingly.

Department's Position: We preliminarily denied Agricola Acevedo's offset to financial expenses for financial income because we could not locate a monthly breakdown of each component of claimed financial income in the firm's response. However, based on Agricola Acevedo's clarification and further analysis of the company's questionnaire response, we are now satisfied that the company's constructed value submission contains the breakdown we requested. Notwithstanding Agricola Acevedo's compliance with our reporting requirements, we are only allowing the offset to financial expenses for the company's short-term interest income from deposits of working capital. The Department only allows an offset to financial expenses for short-term interest income directly related to the

general operations of the company. *See Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy*, 60 FR 31981, 31991 (June 19, 1995). Income from the sale of scrap plastic and wood does not constitute this type of revenue. Under GAAP this revenue could be claimed as an offset to general and administrative expenses by reporting it as a gain or a loss on the disposal of a fixed asset. However, Agricola Acevedo did not compare the sales value to the book value of the fixed assets sold as required under GAAP. Agricola Acevedo also did not justify that these materials were related to the production of subject merchandise produced and sold within these PORs. Therefore, we have disallowed the offset Agricola Acevedo claimed for income it received from the sale of scrap plastic and wood.

Comment 53: Papagayo argues that the Department made an error in its margin calculations by incorrectly consolidating Papagayo's sales tables. Papagayo states that, because each LOTUS file would not accommodate more than 25 importers, it used two files to report the sales data for its submission.

The FTC argues that the errors appear to be the result of respondent's deviations from the format the Department instructed respondents to use in the questionnaire.

Department's Position: We agree with Papagayo and have used the two sales files for the final results.

Issues Raised by Other Respondents

Comment 54: My Flowers requests that the Department not apply a non-cooperative BIA rate to its entries of subject flowers for failing to respond to the Department's requests for information. My Flowers claims that it never received the questionnaire or any other information regarding the administrative reviews. Furthermore, My Flowers contends that the address to which the Department sent materials was out of date, and that it has not occupied the space at the address since December 1992. In support of this argument, My Flowers provides registration certificates from the Colombian Chamber of Commerce, authenticated by the U.S. Embassy and the Colombian Ministry of Foreign Relations. My Flowers claims that the company at its old address received the questionnaire, but failed to let My Flowers know of its arrival. My Flowers submits documentation supporting that the individual who signed the delivery record for the questionnaire was not a My Flowers employee. In conclusion, My Flowers requests that the Department treat it as unlocatable for the POR, and that the Department instruct Customs to assess the ''all others'' rate of 3.10 percent on its entries.

The FTC requests that, if the Department accepts My Flowers' explanation, it include the company in any subsequent administrative reviews.

Department's Position: We have reviewed the documentary evidence on the record and conclude that My Flowers did not receive the questionnaire. Therefore, we have not assigned My Flowers a BIA rate. Instead, we have added My Flowers to the list of firms that were unlocatable, and we will instruct Customs to liquidate its entries at the ''all others'' rate since we have not previously reviewed this firm. We will include My Flowers in any subsequent administrative review if we receive a request for review from an interested party during the anniversary month of the publication of this order. *See* 19 CFR 353.22(a).

Comment 55: Equiflor and Esprit Miami claim that Flores el Majui ceased to exist prior to the release of the Department's questionnaire in the 7th review period. Further, they dispute the Department's preliminary conclusion that Flores el Majui had ever received the questionnaire. Equiflor and Esprit Miami argue that the Department should not assign a non-cooperative BIA rate to entries from Flores el Majui, and that the Department should liquidate those entries at the cash deposit rate in effect at the time of entry.

The FTC rebuts that a company cannot be allowed to abandon its antidumping duty liability by virtue of its liquidation, otherwise firms would simply liquidate themselves and reincorporate under a new name each time a new administrative review was initiated. Additionally, the FTC contends, Equiflor and Esprit Miami have not provided evidence to distinguish Flores el Majui from firms that were unlocatable or to establish that Flores el Majui did not receive the questionnaire.

Department's Position: We can distinguish our treatment of Flores el Majui from that of My Flowers because, in the latter case, the company provided evidence that our service of the questionnaire was defective. However, Equiflor, Esprit Miami, and Flores el Majui did not provide such evidence to the Department. Therefore, we agree with the FTC that failure to apply a non-cooperative BIA rate to Flores el Majui would reward non-compliance with our administrative review and would encourage other firms to liquidate themselves and reincorporate under new names. Accordingly, we have applied a non-cooperative BIA rate to entries of merchandise from this firm.

Comment 56: Proflores contends that the application of first-tier BIA due to its failure to respond to the Department's request for supplementary information was in error. Proflores argues that it did respond to the Department's supplemental questionnaire and that the Department did receive the response in a timely manner.

The FTC asserts that, prior to using Proflores' supplemental submission, the Department should require the company to submit at least a reasonable sampling of growers reports to confirm respondent's reporting methodology for certain expenses.

Department's Position: We agree with Proflores that it submitted its supplemental response in a timely manner, and we have used it for these final results instead of applying BIA. Because we are satisfied with Proflores' response to our supplemental question concerning the reporting of certain expenses, we do not find it necessary to review additional information, including growers reports.

Comment 57: Equiflor, Esprit Miami, and Eden Floral Farms (Eden), importers of subject merchandise in Miami, assert that the Department erred in applying a non-cooperative BIA margin to two Colombian producers: Sunset Farms (5th, 6th, and 7th reviews) and Groex S.A. (5th and 6th reviews). Equiflor and Esprit Miami claim that Sunset Farms was unable to respond to the Department's questionnaire because it had sold most of its assets before the Department released its questionnaires and was operating with reduced staff and facilities at the time it received the questionnaire. Equiflor and Esprit Miami argue that Sunset Farm's condition was far worse than that of Flores Estrella in the fourth review of the instant case, and, under these circumstances, the Department should not apply a non-cooperative BIA. Eden claims that Groex S.A. was out of business and liquidated prior to the due date of sections C and D of the questionnaire, and, therefore, was unable to respond to those sections. Eden notes that Groex S.A. did respond to section A for the 5th and 6th reviews and filed a letter stating that it had no shipments of the subject merchandise in the 7th review and, therefore, did cooperate to the extent possible.

Bloomshare Ltda. (7th review only) and Ciba-Geigy (5th, 6th, and 7th reviews), Colombian producers of the

subject merchandise, also claim that the Department erred in assigning them non-cooperative BIA margins. Bloomshare Ltda. claims that it stopped growing flowers in June 1993, and that it is now in the business of growing produce for the domestic market. Ciba-Geigy claims that it sold its plantation in 1988 to another producer and was no longer in the Colombian flower business during the PORs.

The FTC rebuts that, in the *Fourth Review,* the Department described certain factors to examine when determining whether Flores Estrella and Mountguar were incapable of responding to its questionnaire. However, the FTC contends that the fact pattern in the instant reviews differs in that the respondents failed to notify the Department of their situation in a timely fashion. The FTC points to an identical fact pattern in the third review of this case where the Department determined that information regarding an alleged bankruptcy submitted after the preliminary results of review was untimely and therefore impossible to evaluate. The FTC asserts that the Department properly assigned non-cooperative BIA rates for these respondents.

Department's Position: With regard to Sunset Farms and Groex, Equiflor, Esprit Miami, and Eden do not dispute that these two Colombian producers received the questionnaire. In addition, Equiflor and Esprit Miami do not explain why Sunset Farms failed to submit any response whatsoever. Eden does not dispute the fact that Groex S.A. failed to submit a response to sections C and D of our questionnaire or explain why this producer was unable to do so in a timely fashion. As for Bloomshare Ltda. and Ciba-Geigy, the companies do not dispute that they received the questionnaire and at no time prior to issuance of our preliminary results did they alert us to their situations. Therefore, because respondents have provided untimely explanations of their failure to respond to our questionnaire, we have assigned non-cooperative BIA rates to Sunset Farms, Groex S.A., Bloomshare Ltda., and Ciba-Geigy.

Comment 58: The Floraterra Group (Floraterra) argues that the Department overallocated packing expenses to Floraterra's U.S. sales. Floraterra acknowledges that the Department was correct in changing the packing expenses in Tables 1 and 2 because they should have been the same. Floraterra claims that it mistakenly reported packing expenses on all exports in Table 2, and that, by using the expense from Table 2 instead of Table 1 as the basis for reallocation, the Department is allocating packing expense for all exports over just U.S. sales. Floraterra contends that this is obvious from the administrative record, and that the Department should fix the tables so that the expenses in Table 2 are based on the reported Table 1 expenses, and not the other way around.

Department's Position: Because we received Floraterra's request that we correct its response after publication of our preliminary results, we have applied the six criteria explained in the **BACKGROUND** section of this notice. We find that Floraterra met all of the criteria, with the substantiating evidence having been on the record prior to the preliminary results. Therefore, we have made this change for the final results.

Comment 59: Agricola la Siberia (Siberia) claims that it made two errors in its original response. Siberia claims that it included packing and indirect selling expenses incurred on third-country sales as well as on U.S. sales. Siberia asks the Department to correct its data for the final results.

Department's Position: Because we received Siberia's request that we correct its response after publication of our preliminary results and the alleged error was not apparent from the record, we have applied the six criteria explained in the **BACKGROUND** section of this notice. We find that Siberia failed to meet one of these criteria in that it did not provide supporting documentation for the alleged clerical error. Therefore, we have not made the change requested by Siberia.

Comment 60: Caicedo protests the Department's use of BIA for its sales of minicarnations in the 6th and 7th reviews. Caicedo notes that the Department said that it applied BIA for two reasons: (1) Caicedo improperly used its crop adjustment for the flowers and period in question and failed to correct its crop methodology when the Department requested it to do so; (2) Caicedo had made other unexplained changes to its data, including changes to the reported sales amounts.

Caicedo argues that, contrary to the Department's conclusions, Caicedo did correct its crop adjustment methodology in a December 2, 1994 submission as requested by the Department. However, Caicedo contends that the Department used an earlier submission by the firm in its calculations for the preliminary results. With respect to unexplained charges relating to sales amounts, Caicedo explains that it had inadvertently transferred to its December 2 submission erroneous figures from an earlier response, which it had already corrected for the record. Caicedo concludes that these errors should be corrected because the errors are obvious from the information already in the record.

The FTC maintains that Caicedo had several opportunities to supply corrected information and that the Department was justified in relying on Caicedo's last submission as containing the correct data. The FTC further states that it is the responsibility of Caicedo to prepare its own data correctly.

Department's Position: We have reviewed the record and conclude that Caicedo did make proper corrections as we requested to its crop adjustment methodology. Also, we agree that Caicedo did make certain clerical errors that are substantiated from the information already on the record. Therefore, we have used the corrected information on the record for the final margin calculations.

Comment 61: Guacatay argues that the Department should not have set to zero certain negative net financing costs Guacatay reported in the 5th and 7th reviews. Guacatay states that it made year-end adjustments to its financial expenses to reverse certain provisional entries it made earlier in the years covered by 5th and 7th reviews. According to Guacatay, the result of these year-end adjustments was that it reported financial costs occasionally as negative numbers. However, Guacatay contends, the net financial costs for the PORs as a whole are always positive. Therefore, Guacatay requests that the Department use the net financial costs it reported and explained in its supplemental response.

The FTC disagrees and states that this type of accounting invites manipulation and the Department correctly adjusted negative values to zero.

Department's Position: We agree with Guacatay. We have reexamined Guacatay's supplemental response and conclude that the company adequately explained the basis for making negative financial cost adjustments for certain months. We have therefore used the net financial costs Guacatay reported.

Comment 62: HOSA argues that, although it failed to submit a request for revocation on the anniversary month of the order as required by the Department's regulations, the Department has the discretion under 19 CFR 353.25(a) to grant the untimely revocation request. HOSA further argues that certain circumstances, such as its late retention of counsel and its inability to run an analysis of three years' worth of data to determine its eligibility for revocation at that time, justifies that its late revocation request be given consideration by the Department.

The FTC argues that, even if the Department otherwise finds HOSA to be eligible for revocation, it should deny HOSA's request for revocation because it was not submitted in a timely fashion.

Department's Position: Based on our final results of these administrative reviews, we find that HOSA has not had a three-year period of no sales at less than fair value and thus does not qualify for revocation. Therefore, the issue of HOSA's late revocation request is moot.

Comment 63: Aspen Garden Ltda. contends that, for the final results, the Department should use the prime rate it reported in its original questionnaire response instead of calculating imputed credit expenses for U.S. sales based on the company's short-term Colombian peso borrowings during each POR. Furthermore, Aspen Garden Ltda. argues that the Department should use the statutory eight-percent profit for constructed value instead of the profit percentage it reported in its original questionnaire response. Aspen Garden Ltda. explains that it based the profit percentage it reported in its original submission on third-country sales and, furthermore, that it calculated the rate incorrectly. Finally, Aspen Garden Ltda. contends that the packing expenses it reported in its U.S. price table are correct, and the Department should not have modified them. Aspen Garden Ltda. explains that it mistakenly reported in its constructed value table the cost of packing flowers that are not under review in addition to the cost of packing subject merchandise, and requests that the Department not modify the packing costs it reported in its U.S. price table.

Department's Position: We do not agree with Aspen Garden's argument that we should calculate imputed credit expenses on U.S. sales using the prime rate respondent reported in its original questionnaire response. We have calculated Aspen Garden's imputed credit expenses based on the company's short-term Colombian peso borrowings during the POR. (*See* the March 30, 1995, Memorandum to the File for a discussion of Aspen Garden's interest rate calculation. For a full discussion of the interest rate issue, *see* our response to Comment 22 of this notice.) With regard to profit for constructed value, we have used the statutory eight-percent figure since the profit percentage that Aspen Garden reported in its original submission was based on third-country sales data. (*See* our response to Comment 8 for a full discussion of the appropriate profit percentage to use for constructed value.) Aspen Garden made it clear in its original questionnaire response that it used third-country sales data to calculate the profit percentage it originally reported.

With regard to packing expenses, we received Aspen Garden's request that we correct its response after publication of our preliminary results and the alleged error is not apparent from the record. Therefore, we have applied the six criteria explained in the **BACKGROUND** section of this notice. We find that Aspen Garden's situation fails to meet one of these criteria. Aspen Garden did not provide supporting documentation for the alleged error. Therefore, we have not made the change requested by Aspen Garden. (*See* the March 30, 1995, Memorandum to the File for an explanation of the U.S. packing expenses we used for Aspen Garden in the final results.)

Comment 64: Flores de Oriente claims that the distribution of indirect selling expenses the Department made is incorrect. According to respondent, for one client, the cost of packing and handling was included in indirect selling expenses incurred in the home market on U.S. sales. Therefore, respondent contends, it did not report packing costs for this particular customer. Respondent states that the indirect selling expenses in Table 1 will not equal Table 2 because of this, but total costs for the Table 1 and Table 2 are equal. Thus, respondent argues, the Department should not have made adjustments to packing costs and indirect selling expenses.

Department's Position: We do not agree with Flores de Oriente that total costs for Table 1 equal Table 2. Packing expenses respondent reported in Table 2 equalled the packing expenses it reported in Table 1. However, indirect selling expenses respondent reported in Table 1 did not equal indirect selling expenses it reported in Table 2. Therefore, total costs between the two tables did not reconcile. Because indirect selling expenses did not reconcile, we have distributed these expenses for these final results as we did for the preliminary results.

Comment 65: Agromonte Ltda. argues that the Department incorrectly changed the figures for packing costs and indirect selling expenses incurred in Colombia on U.S. sales when the totals reported in Table 1 conflicted with the amounts reported in Table 2. Agromonte Ltda. claims that the reason for the discrepancy in packing costs is because the values it reported in Table 1 are based on units sold while the values for Table 2E are based on boxes sent. According to respondent, the correct amounts are the ones it stated in Table 2E because they identify the packing costs of the total units sent each month.

Agromonte Ltda. contends that it could not find any discrepancies between Table 1 and Table 2D for indirect selling expenses. Therefore, respondent states, the Department should not have made any changes.

Department's Position: We disagree with Agromonte's argument. Even though respondent calculated the amounts it reported in Table 2E for packing costs based on boxes shipped and the amounts it reported in Table 1 were calculated on units sold, the totals should still equal one another. Therefore, the adjustments we made in the preliminary results remain in our final results.

As for Agromonte's contention that there were no discrepancies relating to indirect selling expenses, we disagree. The amounts respondent reported in Table 2D do not equal the amounts it reported in Table 1. Therefore, the reconciliation we made in the preliminary results remains in our final results.

Comment 66: Florval S.A. claims that it erroneously reported packing costs and indirect selling expenses for all markets instead of packing expenses and indirect selling expenses for the U.S. market in Table 2D and Table 2E of its response. Florval requests that the Department include in Table 2 the results of adding all indirect selling expenses and packing costs shown in Table 1 for each customer.

Department's Position: We agree with Florval S.A. However, instead of adding all indirect selling expenses and packing costs shown in Table 1 for each customer, we were able to determine packing costs and indirect selling expenses related to flowers sold in the U.S. market. We derived this data from information already on the record prior to our preliminary results.

Comment 67: The Florcol Group argues that, in the 5th and 7th reviews, the difference between the amounts for indirect selling expenses in Table 2D compared to Table 1 is due to the allocation method it used. The Florcol Group states that the total indirect selling expenses should be allocated in Table 1 to each month on the basis of U.S. sales value instead of volume.

With respect to packing costs in the 5th review, the Florcol Group states that the total amount shown in Table 2E corresponds to the total packing costs for all export quality minicarnations it sold during the review period. The Florcol Group states that the Department can derive the correct total packing costs for Table 2E by totalling the packing costs reported in Table 1.

In the 7th review, Florcol contends that it used the wrong unitary costs for

packing in order to calculate packing costs for Table 1. Florcol identifies the correct unitary packing cost and requests that the Department make the appropriate corrections.

Department's Position: Because we received the Florcol Group's request that we correct its response after publication of our preliminary results and the alleged error was not apparent from the record, we have applied the six criteria explained in the **BACKGROUND** section of this notice. For indirect selling expenses in the 5th and 7th reviews, we find that Florcol failed to meet these criteria in that the error was a methodological error and not a clerical error. Florcol explained, in its July 18, 1995 submission, that indirect selling expenses reported in Table 2 differed from those reported in Table 1 because of the allocation methodology used. However, these expenses should match, regardless of the allocation methodology. In addition, Florcol states what it claims the correct total amount of indirect selling expense should be, but does not provide documentation to substantiate its claims.

With respect to the unitary packing cost in the 7th review, Florcol did not provide supporting documentation for the alleged clerical error. Therefore, we have not made the change Florcol requests.

With respect to packing costs in the 5th review, Florcol met the six criteria. Therefore, we have made this correction.

Comment 68: Inversiones Santa Rita (Rita) questions why the Department modified line 18 of Table 2 (cull revenue) for the preliminary results. Rita claims that its reported data was proper and that it established that the data it submitted in the cull revenue amounts came from its invoices.

Department's Position: We agree with Rita. We inadvertently copied line 18 of Rita's Table 2, cull revenue, for minicarnations in the 6th review to line 18 for standard carnations in the 6th review. The same error occurred in the 7th review. For the final results, we used Rita's original data as reported.

Comment 69: Rita argues that each flower type it grows has a substantially different cost of production and that the Department was incorrect in modifying these costs by using a percentage-based ratio of these items to the total sales as reported in the financial statements.

Department's Position: In our October 25, 1994, supplemental questionnaire, we asked Rita to explain its methodology for allocating indirect costs and general expenses. In addition, we asked Rita to explain the accuracy of its allocation methodology when ''area of cultivation'' was used as a basis for allocating an expense. In its November 1, 1994, response to these questions, Rita failed to explain its methodology and failed to document the basis for allocating its costs. Because Rita failed to explain how its costs were allocated among flower types and because the amounts reported for cost of goods sold, selling expenses, and general and administrative expenses reported in Table 2D conflicted with data reported in Rita's financial statements, for the preliminary results we disregarded Rita's reported cultivation costs, general and administrative expenses, and indirect expenses, and calculated an amount based on Rita's financial statements. We applied the relative percentage of these costs to sales found in the financial statements in Rita's response with the presumption that all flowers have the same relative cost of production.

Because Rita has not been able to substantiate from information already on the record that each flower type has a substantially different cost of production, we continue to apply the methodology used in the preliminary results for these final results.

Comment 70: Papagayo argues that the Department used an incorrect set of U.S. price and constructed value tables for the preliminary results. According to the respondent, it inadvertently submitted incorrect tables in its supplemental questionnaire response, but submitted what it believed were corrected tables later. However, Papagayo comments that it appears that it mixed up the tables when submitting the ''corrected'' responses. Specifically, Papagayo requests that the Department correct the following for certain importers: gross sales value and volume totals, additional movement expenses, indirect selling expenses incurred in the home market for U.S. sales, quantities shipped, and domestic inland freight for U.S. sales. The respondent also claims that one ''importer'' the Department included in its preliminary results is not actually a U.S. importer. In sum, Papagayo claims that, if the Department makes the changes that respondent has provided, the Department will have a correct version of the tables.

Department's Position: Because we received Papagayo's request that we correct its response after publication of our preliminary results and the alleged errors were not apparent from the record, we have applied the six criteria explained in the **BACKGROUND** section of this notice. We find that Papagayo failed to meet one of these criteria in that it did not provide supporting documentation for these alleged errors. Therefore, we did not make the changes requested for certain importers. However, we could determine from information Papagayo presented, and in accordance with our six criteria, that one ''importer'' was not a U.S. importer, so we deleted that importer's tables for these final results. In all other respects, we have used in these final results the same tables we used in our preliminary results.

Final Results of Review

As a result of our review, we determine the following percentage weighted-average margins to exist for the 5th, 6th, and 7th administrative reviews:

Producer/exporter	5th	6th	7th
Abaco Tulipanex de Colombia	(1)	(1)	(1)
Agrex de Oriente	(2)	(2)	(1)
AGA Group	(2)	(2)	10.43
Agricola la Celestina			
Agricola la Maria			
Agricola Benilda Ltda			
Aricola Acevedo Ltda	1.02	4.65	2.69
Agricola Arenales Ltda	2.06	3.18	3.32
Agricola Benilda	(1)	(1)	10.43
Agricola Bonanza Ltda	(1)	(1)	(1)
Agricola Circasia Ltda	16.23	1.70	2.01
Agricola de los Alisos	76.60	76.60	76.60
Agricola el Cactus	2.39	2.15	1.67
Agricola el Redil	0.53	0.54	0.45
Agricola Guali S.A	(1)	(1)	(1)

Producer/exporter	5th	6th	7th
Agricola Jicabal	76.60	76.60	76.60
Agricola la Corsaria	5.34	3.18	1.88
Agricola las Cuadras Group	1.72	4.72	2.23
Agricola Las Cuadras Ltda			
Flores de Hacaritama			
Agricola La Siberia	(2)	(2)	32.42
Agricola Malqui	76.60	76.60	76.60
Agricola Monteflor Ltda	(2)	(2)	76.60
Agricola Uzatama	(2)	(2)	76.60
Agricola Yuldama	(2)	(2)	(1)
Agrobloom Ltda	(2)	(2)	76.60
Agrodex Group	1.14	0.34	1.14
Agricola El Retiro Ltda.			
Agricola Los Gaques Ltda.			
Agrodex Ltda.			
Degaflores Ltda.			
Flores Camino Real Ltda.			
Flores de la Comuna Ltda.			
Flores De Las Mercedes Ltda.			
Flores De Los Amigos Ltda.			
Flores De Los Arrayanes Ltda.			
Flores De Mayo Ltda.			
Flores Del Gallinero Ltda.			
Flores Del Potrero Ltda.			
Flores Dos Hectareas Ltda.			
Flores De Pueblo Viejo Ltda.			
Flores El Puente Ltda.			
Flores El Trentino Ltda.			
Flores La Conejera Ltda.			
Flores Manare Ltda.			
Florlinda Ltda.			
Inversiones Santa Rosa ARW Ltda.			
Horticola El Triunfo			
Horticola Montecarlo Ltda.			
Agroindustrial Don Eusebio Group	4.45	2.10	1.90
Agroindustrial Don Eusebio Ltda.			
Celia Flowers			
Passion Flowers			
Primo Flowers			
Temptation Flowers			
Agrokoralia	76.60	76.60	76.60
Agromonte Ltda	7.97	1.88	3.16
Agropecuria Cuernavaca Ltda	3.11	12.45	6.84
Aspen Gardens	(2)	(2)	7.75
Astro Ltda	(1)	19.20	18.74
Bali Flowers	(2)	(2)	76.60
Becerra Castellanos y Cia	2.86	0.28	62.79
Bloomshare	(2)	(2)	76.60
Bojaca Group	76.60	20.20	0.21
Agricola Bojaca			
Plantas y Flores			
Tropicales (''Tropiflora'')			
Universal Flowers			
Bogota Flowers	76.60	76.60	76.60
Caicedo Group	0.49	0.71	0.57
Agro Bosque, S.A.			
Aranjuez S.A.			
Exportaciones Bochica S.A.			
Floral Ltda.			
Flores Del Cauca			
Inversiones Targa Ltda.			
Productos El Zorro			
Cantarrana Group	3.37	21.56	7.97
Cantarrana Ltda.			
Agricola Los Venados Ltda.			
Ciba Geigy	76.60	76.60	76.60
Cienfuegos Group	5.43	3.34	8.69
Cienfuegos Ltda.			
Flores La Conchita			
Cigarral Group	5.30	41.84	49.39
Flores Cigarral			
Flores Tayrona			
Claveles Colombianas Group	2.30	1.11	1.50

Producer/exporter	5th	6th	7th
Claveles Colombianos Ltda.			
Fantasia Flowers Ltda.			
Splendid Flowers Ltda.			
Sun Flowers Ltda.			
Claveles De Los Alpes Ltda	1.16	6.84	3.87
Claveles Tropicales de Colombia	(2)	(2)	76.60
Colflores	76.60	76.60	76.60
Colibri Flowers Ltda	3.62	2.39	5.01
Colony International Farm	76.60	76.60	76.60
Combiflor	(2)	(2)	0.35
Conflores Ltda	76.60	76.60	76.60
Cultiflores Ltda	(2)	0.00	5.87
Cultivos el Lago	76.60	76.60	76.60
Cultivos Medellin Ltda	4.98	0.02	3.97
Cultivos Miramonte Group	0.36	0.00	2.08
Cultivos Miramonte S.A.			
Flores Mocari S.A.			
Cultivos Tahami Ltda.	4.30	0.02	1.15
Daflor Ltda	0.29	1.15	(2)
De la Pava Guevara e Hijos Ltda	(1)	(1)	(1)
Dianticola Colombiana Ltda.	2.57	24.46	8.65
Diveragricola	(2)	(2)	(1)
Dynasty Roses Ltda	(2)	(2)	(1)
El Antelio S.A	(2)	(2)	(1)
Envy Farms Group	(2)	(2)	0.00
Envy Farms			
Flores Marandua Ltda.			
Expoflora Ltda	(1)	(1)	(1)
Exporosas	(2)	(2)	(1)
Falcon Farms De Colombia S.A. (formerly Flores de Cajibio Ltda.)	0.00	0.00	0.20
Farm Fresh Flowers Group	1.42	0.81	1.70
Agricola de la Fontana			
Flores de Hunza			
Flores Tibati			
Inversiones Cubivan			
Fernando de Mier	(2)	(2)	(1)
Flor Colombiana S.A	(2)	(2)	62.79
Flora Bellisima Ltda	76.60	76.60	76.60
Flora Intercontinental	(1)	(1)	(1)
Floralex Ltda	76.60	76.60	76.60
Florandia Herrera Camacho y Cia	(1)	(1)	(1)
Floraterra Group	7.76	4.59	4.66
Flores Casablanca S.A.			
Flores San Mateo S.A.			
Siete Flores S.A.			
Floreales Group	(1)	10.76	6.10
Floreales			
Kimbaya			
Florenal (Flores el Arenal) Ltda	0.67	14.05	8.19
Flores Acuarela S.A.	(1)	(1)	(1)
Flores Aguila	0.04	(1)	(1)
Flores Ainsuca Ltda	(2)	(2)	5.65
Flores Alfaya Ltda	76.60	76.60	76.60
Flores Andinas	(1)	(1)	(1)
Flores Arco Iris	76.60	76.60	76.60
Flores Aurora Ltda	0.11	1.07	0.08
Flores Bachue	(1)	(1)	(1)
Flores Balu	(2)	(2)	76.60
Flores Carmel S.A	(2)	(2)	2.53
Flores Catalina	(2)	(2)	76.60
Flores Colon Ltda	1.14	4.01	2.08
Flores Comercial Bellavista Ltda	3.46	0.38	2.14
Flores de Aposentos Ltda	(2)	(2)	2.77
Flores de Fragua	(2)	(2)	76.60
Flores de la Montana	6.71	0.12	5.13
Flores de la Parcelita	(1)	(1)	(1)
Flores de la Pradera	76.60	76.60	76.60
Flores de la Vega Ltda	3.56	0.21	1.69
Flores de la Vereda	76.60	76.60	76.60
Flores del Campo Ltda	5.38	4.31	4.82
Flores del Lago Ltda	4.20	0.17	1.99
Flores del Pradro	(2)	(2)	76.60
Flores del Rio Group	0.10	6.96	10.37

Producer/exporter	5th	6th	7th
Agricola Cardenal S.A.			
Flores Del Rio S.A.			
Indigo S.A.			
Flores de Oriente	(2)	(2)	3.34
Flores Depina Ltda	9.97	0.00	6.24
Flores de Serrezuela Ltda	1.67	0.34	0.21
Flores de Suba	9.39	4.76	6.42
Flores de Tenjo Ltda	(1)	(1)	(1)
Flores el Lobo	(2)	16.52	2.35
Flores el Majui	(2)	(2)	76.60
Flores el Molino S.A	0.29	1.07	5.37
Flores el Rosal Ltda	25.05	8.63	3.90
Flores el Zorro Ltda	8.84	6.98	2.57
Flores Estrella	76.60	76.60	(2)
Flores Galia Ltda	(1)	(1)	(1)
Flores Gicro Group	6.40	7.00	6.93
Flores Gicro Ltda			
Flores de Colombia			
Flores Guaicata Ltda	76.60	76.60	76.60
Flores Hacienda Bejucol	(2)	(2)	(1)
Flores Juanambu Ltda	0.80	1.72	2.30
Flores Juncalito Ltda	(1)	(1)	(1)
Flores la Fragrancia	11.04	27.14	13.50
Flores la Gioconda	(2)	(2)	3.51
Flores la Lucerna	(1)	(1)	(1)
Flores la Macarena	(1)	(1)	(1)
Flores la Union/Gomez Arango & Cia	0.70	0.00	0.00
Flores las Caicas	29.83	45.82	14.51
Flores las Mesitas	(2)	(2)	(1)
Flores los Sauces	(2)	(2)	1.97
Flores Magara	(2)	(2)	76.60
Flores Monserrate Ltda	1.69	4.69	2.22
Flores Mountgar	76.60	76.60	(2)
Flores Naturales	(2)	(2)	76.60
Flores Petaluma Ltda	76.60	76.60	76.60
Flores Ramo Ltda	(1)	(1)	(1)
Flores Rio Grande	(2)	(2)	76.60
Flores S.A	(1)	(1)	(1)
Flores Sagaro	0.33	3.53	3.29
Flores Sairam Ltda	(2)	(2)	(1)
Flores San Carlos	(1)	(1)	(1)
Flores San Juan S.A	(2)	(2)	5.31
Flores Santa Fe Ltda	3.07	4.76	4.96
Flores Santa Lucia	76.60	76.60	76.60
Flores Selectas	(2)	(2)	(1)
Flores Silvestres	2.43	0.11	2.04
Flores Tejas Verdes Ltda	76.60	76.60	76.60
Flores Tiba S.A	1.24	3.55	0.52
Flores Tocarinda	0.00	0.60	0.76
Flores Tomine Ltda	2.76	0.27	2.35
Flores Tropicales (Happy Candy) Group	0.96	2.99	2.14
Flores Tropicales Ltda.			
Happy Candy Ltda.			
Mercedes Ltda.			
Rosas Colombianas Ltda.			
Florex Group	6.74	7.09	6.97
Agricola Guacari			
Flores Altamira S.A.			
Flores de Exportacion S.A.			
Santa Helena S.A.			
Flores del Salitre Ltda.			
S.B. Talee de Colombia			
Floricola La Gaitana S.A	0.03	0.56	5.02
Florimex Colombia Ltda	(2)	(2)	(1)
Florval	(2)	(2)	5.98
Fribir Ltda	(2)	(2)	76.60
Funza Group	0.04	0.42	0.69
Flores Alborada			
Flores de Funza S.A.			
Flores del Bosque Ltda.			
Green Flowers	(2)	(2)	19.67
Groex S.A	76.60	76.60	(1)
Grupo Andes	3.81	0.35	0.22

Producer/exporter	5th	6th	7th
Cultivos Buenavista Ltda.			
Flores De Los Andes Ltda.			
Flores Horizante Ltda.			
Inversiones Penas Blancas Ltda.			
Grupo el Jardin	(2)	(2)	0.45
Agricola el Jardin Ltda.			
La Marotte S.A.			
Orquideas Acatayma Ltda.			
Guacatay Group	3.62	3.57	4.95
Agricola Guacatay S.A.			
Jardines Bacata Ltda.			
Hacienda Susata	(2)	(2)	76.60
Horticultura El Molino	(2)	(2)	(1)
HOSA Group	0.45	0.12	0.74
Horticultura De La Sabana S.A.			
Innovacion Andina S.A.			
Minispray S.A.			
HOSA Ltda.			
Prohosa Ltda.			
Industrial Agricola Ltda	0.65	2.99	(2)
Ingro Ltda	8.87	0.05	1.43
Inpar	76.60	76.60	76.60
Interflora Ltda	76.60	76.60	76.60
Inter Flores Ltda	(2)	(2)	76.60
Internacional Flowers	(2)	(2)	76.60
Invernavas	76.60	76.60	76.60
Inverpalmas	1.14	12.23	3.82
Inversiones Almer Ltda	(1)	(1)	(1)
Inversiones Cota	(2)	(2)	(1)
Inversiones el Bambu Ltda	(1)	(1)	(1)
Inversiones Flores del Alto	(2)	(2)	76.60
Inversiones Morcote	(1)	(1)	(1)
Inversiones Morrosquillo	(2)	(2)	4.71
Inversiones Nativa Ltda	76.60	76.60	76.60
Inversiones Santa Rita Ltda	14.09	16.89	14.62
Inversiones Supala S.A	(2)	3.94	3.89
Inversiones Valley Flowers Ltda	(2)	(2)	30.59
Iturrama S.A	18.85	7.89	(1)
Jardin	76.60	76.60	76.60
Jardines de America	(2)	(2)	14.81
Jardines del Muna	76.60	76.60	76.60
La Florida	76.60	76.60	76.60
La Plazoleta Ltda	(1)	(1)	(1)
Las Amalias Group	9.18	4.59	3.80
Las Amalias S.A.			
Pompones Ltda.			
La Fleurette de Colombia Ltda.			
Ramiflora Ltda.			
Linda Colombiana Ltda	1.53	2.42	1.55
Las Flores	(1)	(1)	(1)
Los Geranios Ltda	7.84	0.92	2.12
Luisa Flowers	(2)	(2)	(1)
Manjui Ltda	(1)	0.02	0.14
Maxima Farms Group	0.95	0.83	0.24
Agricola los Arboles S.A.			
Polo Flowers			
Rainbow Flowers			
Monteverde Ltda	5.73	5.51	5.24
Naranjo Exportaciones e Importaciones	(2)	(2)	76.60
Natuflora Ltda./San Martin Bloque B	2.12	1.33	1.69
Oro Verde Group	2.45	1.66	0.37
Inversiones Miraflores S.A.			
Inversiones Oro Verde S.A.			
Papagayo Group	7.82	15.21	9.96
Agricola Papagayo Ltda.			
Inversiones Calypso S.A.			
Petalos De Colombia Ltda	14.86	4.20	4.09
Pisochago Ltda	(2)	(2)	5.77
Plantaciones Delta Ltda	(1)	(1)	(1)
Plantas Ornamentales De Colombia S.A	0.13	4.77	76.60
Plantas S.A	(1)	(1)	(1)
Proflores Ltda	(2)	(2)	0.00
Propagar Plantas	(1)	(1)	(1)
Queen's Flowers Group	76.60	76.60	76.60

Producer/exporter	5th	6th	7th
Queen's Flowers De Colombia Ltda.			
Jardines De Chia Ltda.			
Jardines Fredonia Ltda.			
Agrodindustrial del Rio Frio			
Flores Canelon			
Flores del Hato			
Flores La Valvanera Ltda.			
M.G. Consultores Ltda.			
Flores Jayvana			
Flores el Cacique			
Flores Calima			
Flores la Mana			
Flores el Cipres			
Flores el Roble			
Flores del Bojaca			
Flores el Tandil			
Flores el Ajibe			
Flores Atlas			
Floranova			
Cultivos Generales			
Rosaflor	(1)	(1)	(1)
Rosales de Colombia Ltda	(1)	(1)	(1)
Rosalinda Ltda	(2)	(2)	(1)
Rosas de Colombia	(1)	(1)	(1)
Rosas Sabanilla Group	0.23	0.52	0.46
Flores La Colmena Ltda.			
Rosas Sabanilla Ltda.			
Inversiones La Serena			
Agricola La Capilla			
Rosas Tesalia	(1)	(1)	(1)
Rosas y Flores Ltda	76.60	76.60	76.60
Rosex Ltda	(1)	(1)	(1)
Rosicler Ltda	76.60	76.60	76.60
Sabana Flowers	76.60	76.60	76.60
Sabana Group	7.89	2.59	3.48
Flores de la Sabana S.A.			
Roselandia			
Sansa Flowers	(1)	(1)	(1)
Santa Rosa Group	1.88	2.97	0.96
Flores Santa Rosa Ltda.			
Floricola la Ramada Ltda.			
Santana Flowers Group	0.26	2.14	(2)
Hacienda Curubital			
Inversiones Istra			
Santana Flowers			
Senda Brava Ltda	12.37	0.10	1.57
Shasta Flowers y Compania Ltda	3.91	0.22	0.00
Siempreviva	(1)	(1)	(1)
Soagro Group	9.78	13.23	5.81
Argicola el Mortino Ltda.			
Flores Aguaclara Ltda.			
Flores del Monte Ltda.			
Flores la Estancia			
Jaramillo y Daza			
Sunset Farms	76.60	76.60	76.60
Superflora Ltda	(2)	(2)	6.28
Sweet Farms	(2)	(2)	(1)
Tag Ltda	0.31	0.64	3.38
Tempest Flowers	76.60	76.60	76.60
The Beall Company (Beall's Roses)	(1)	(1)	(1)
Tinzuque Group	5.48	0.07	0.01
Tinzuque Ltda.			
Catu S.A.			
Toto Flowers Group	1.34	1.98	0.09
Flores de Suesca S.A.			
Toto Flowers			
The Tuchany Group	0.59	0.50	0.83
Tuchany S.A.			
Flores Sibate S.A.			
Flores Munya S.A.			
Flores Tikaya Ltda.			
Uniflor Ltda	6.14	1.11	3.78
Velez de Monchaux Group	4.38	6.20	5.10

Producer/exporter	5th	6th	7th
Velez De Monchaux e Hijos Y Cia. S. en C. Agroteusa			
Victoria Flowers	0.76	2.33	1.74
Villa Cultivos Ltda	(2)	(2)	3.37
Vuelven Ltda	(2)	4.20	4.69

[1] No U.S. sales during this review period.
[2] No review requested for this period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages as stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse for consumption, as provided by section 751(a)(1) of the Act, on or after the publication date of these final results of review: (1) The cash deposit rate for the reviewed companies will be the most recent rates as listed above; (2) for previously reviewed or investigated companies not listed above, 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, a prior 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 will be the ''all other'' rate of 3.10 percent. This is the rate established during the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final 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 notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. These administrative reviews 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: August 9, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–20931 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 080996C]

Gulf of Mexico Fishery Management Council; Public Meetings

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 (Council) will convene public meetings.

DATES: The meetings will be held on September 9–13, 1996.

ADDRESSES: These meetings will be held at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, LA; telephone: 504–525–9444.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

September 11

3:00 p.m.—Convene.

3:15 p.m. - 4:15 p.m.—Receive a report of NMFS Highly Migratory Species Activities.

4:15 p.m. - 5:30 p.m.—Receive a report of the Joint Shrimp/Reef Fish Committee.

September 12

8:30 a.m. - 10:30 a.m.—Receive a report of the Shrimp Management Committee.

10:30 a.m. - 11:30 a.m.—Receive a report of the Red Drum Management Committee.

1:00 p.m. - 3:30 p.m.—Reconvene to receive a report of the Reef Fish Management Committee.

3:30 p.m. - 4:00 p.m.—Receive a report of Habitat Protection Committee.

4:00 p.m. - 4:30 p.m.—Receive a report of the Ad Hoc Communications Committee.

4:30 p.m. - 5:00 p.m.—Personnel Session (CLOSED SESSION).

September 13

8:30 a.m. - 9:15 a.m.—Receive a report of Magnuson Act Amendments.

9:15 a.m. - 9:30 a.m.—Receive a report of the Shark Operations Team.

9:30 a.m. - 9:45 a.m.—Receive a South Atlantic Fishery Management Council Report.

9:45 a.m. - 10:00 a.m. —Receive Enforcement Report.

10:00 a.m. - 10:30 a.m.—Receive Director's Reports.

10:30 a.m. - 10:45 a.m.—Other business to be discussed.

10:45 a.m. - 11:00 a.m.—Election of Chairman and Vice-Chairman.

Committees

September 9

11:00 a.m. - 12:00 noon—Convene the Personnel Committee. (CLOSED SESSION)

1:00 p.m. - 5:00 p.m.—Convene the Joint Shrimp/Reef Fish Management Committee. The committees will consider a report by LGL Ecological Research Associates, Inc. of Bryan, Texas that analyzes the procedure and data available for use by NMFS in preparing the assessments of the status of red snapper stock. The committees will also hear comments by scientific groups on this report and will develop its recommendations to the Council.

September 10

8:00 a.m. –12:00 noon—Convene the Shrimp Management Committee. This committee will review staff revisions to Draft Shrimp Amendment 9, which addresses shrimp trawl bycatch, select their preferred management alternatives relating to bycatch reduction and will schedule public hearings on the amendment.

1:00 p.m. - 5:30 p.m.—Convene the Reef Fish Management Committee. This committee will review a draft discussion paper containing alternatives for a license limitation system for the commercial red snapper fishery that would limit participation in the fishery. The committee will also schedule meetings of an Ad Hoc Red Snapper Advisory Panel, consisting of commercial fishermen and industry representatives, and of scientific groups, to review the discussion paper and recommend the management alternatives for consideration by the Council in January, 1997.

September 11

8:00 a.m. - 11:30 a.m.—Convene the Red Drum Management Committee. This committee will review a NMFS assessment of the status of the Gulf-red drum stocks. They will also review a report of a scientific stock assessment panel which has recommended the fishery in Federal waters remain closed for several years until the spawning stock is restored.

12:30 p.m. - 2:30 p.m.—Convene the Habitat Protection Committee. This committee will review a draft policy on marine aquaculture. The policy would be used by the Council in commenting to Federal and state agencies on such projects in the Gulf area.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 30, 1996.

Dated: August 13, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–21066 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080896E]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on August 29, 1996, at 10:00 a.m.

ADDRESSES: The meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA 19153; telephone: 215–492–0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the commercial quota and recreational harvest limit for 1997.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

Dated: August 13, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–21063 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080896F]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Surfclam and Ocean Quahog Committee, Scientific & Statistical Committee, and Advisory Panel will hold a public meeting.

DATES: The meeting will be held on September 4, 1996, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA 19153; telephone: 215–492–0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to set quotas for surfclams and ocean quahogs for 1997.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting dates.

Dated: August 13, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–21064 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080896G]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Scup Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on September 5, 1996, beginning 10:00 a.m.

ADDRESSES: The meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA 19153; telephone: 215–492–0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the commercial quota and recreational harvest limit for 1997.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting dates.

Dated: August 13, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–21065 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff, Personnel; Human Resources Development Division (HQ USAF/DPCH), Department of the Air Force, Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Human Resources Development Division announces the proposed revision to AF Form 2800, Family Support Center Individual/Family Data Card. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 18, 1996.

ADDRESSES: Written comment and recommendations on the proposed information collection should be sent to HQ USAF/DPCH, 1040 Air Force Pentagon—5C238, Washington, DC 20330–1040, ATTN: Lt Col David Wolpert.

FOR FURTHER INFORMATION CONTACT: To request more information on this revised data collection instrument, please write to the above address, or call (703) 697–4720.

Title and Associated Form: Family Support Center Individual/Family Data Card, AF Form 2800.

Needs and Uses: The information collection requirement is necessary to obtain demographic data about individuals and family members who utilize the services offered by the Family Support Center. It also is a mechanism for tracking the services provided so can keep a history of services provided as well as gathering data about the services provided.

Affected Public: All those eligible for services provided by Family Support Centers (all Department of Defense personnel and their families).

Annual Burden Hours: 1000.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Average Burden per Response: 5 Minutes.

Frequency: Once.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents could be all those eligible for services i.e., all Department of Defense personnel and their families. The completed form is used to gather demographic data on those who use Family Support Centers, track what programs or services they use and how often. The data elements in this form are the basis for quarterly data gathering that is forwarded through Major Commands to the Air Staff. This form is essential for record keeping and data gathering.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–20983 Filed 8–16–96; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The Intel Mission Panel, USAF Scientific Advisory Board, will meet on 11–12 September 1996 at Wright-Patterson AFB, OH from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to acquaint the panel with the NAIC MASINT production activities via discussions, briefings, and demos.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–20988 Filed 8–16–96; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy

Rescission of the Notice of Intent To Prepare an Environmental Impact Statement for Solid Waste Disposal at Naval Station Roosevelt Roads, Puerto Rico

SUMMARY: The Department of the Navy rescinds the Notice of Intent (NOI) to Prepare an Environmental Impact Statement for Solid Waste Disposal Alternatives at U.S. Naval Station (NAVSTA) Roosevelt Roads, Puerto Rico which appeared in the Federal Register on 17 November 1992. The existing sanitary landfill at NAVSTA Roosevelt Roads accepts nonhazardous solid waste generated at the station as well as solid waste from in-port ships. In 1992, due to changes to RCRA Subtitle D regulations concerning siting and operation of sanitary landfills, the Navy sought to dispose of solid waste at a site that would be in compliance with regulations. Alternatives to have been addressed in the EIS included no action, use of an existing municipal landfill, use of a privately operated landfill, and establishment of a new landfill on NAVSTA Roosevelt Roads.

In November 1994, NAVSTA Roosevelt Roads obtained a permit from the Puerto Rico Environmental Quality Board (EQB) to continue operations at the existing sanitary landfill, in accordance with the Sanitary Landfill Operating Plan, for a 10-year period. NAVSTA Roosevelt Roads now desires to construct a 10-acre vertical lift within the existing sanitary landfill in compliance with EQB regulations. After ten years, the facility to be developed would also function as a locale for transfer of the station's nonhazardous solid waste to a regional disposal facility. Currently, there is no private or municipal landfill within the region in compliance with RCRA Subtitle D and EQB regulations (i.e., controlled facility). During recent discussions with representatives of NSRR Roosevelt Roads, officials from the Puerto Rico Solid Waste Management Authority indicated that they are in the process of developing a management plan for construction and operation, within ten years, of a controlled regional disposal facility at Fajardo regardless of the Navy's actions. This controlled facility would have the capacity to dispose of 400 tons of solid waste per day. NSRR Roosevelt Roads would dispose of an average of 30 tons per day there, over a 30-year planning period, which would constitute approximately 7.5 percent of the projected daily disposal at the regional landfill. It is anticipated that the disposal of NSRR Roosevelt Roads'

solid waste would not significantly impact on the planned operations of the regional landfill. Accordingly, the Navy will prepare an Environmental Assessment for the current proposal.

Dated: August 14, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–21059 Filed 8–16–96; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Partially Closed Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: September 16, 1996.

TIME: 10:00–11:00 A.M., (open); 11:00 A.M.–12:00 noon, (closed); 12:00 noon–3:30 P.M., (open).

LOCATION: Sofitel Hotel, Rosemont, Illinois.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee will hold a partially closed meeting on September 16, 1996. During the first open portion of the meeting, 10:00–11:00 A.M., the Committee will review definitions of standard, comprehensive, and focused assessments. The Committee will then meet in closed session from 11:00 A.M. to 12:00 noon to continue the discussions about the development of cost estimates for the NAEP and future contract initiatives. Public disclosure of this information would likely have an adverse financial affect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption (9) (B) of Section 552b(c) of Title 5 U.S.C. Beginning at 12:00 noon, until approximately 3:30 p.m., the Committee will meet again in open session. Three agenda items are scheduled for this open portion of the meeting: (1) review of NAEP schedule including discussion on Civics assessment; (2) redesign competition and commissioned papers; and (3) assignments to appropriate committees.

A summary of the activities of the closed portion of the meeting and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C., 522b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: August 13, 1996.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 96–20981 Filed 8–16–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–457–002]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 13, 1996.

Take notice that on August 7, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, to be effective August 1, 1996:

First Revised Sheet No. 188

ANR states that the above-referenced tariff sheet is being filed pursuant to the Commission's July 23, 1996, Order on Compliance Filing. ANR states that the revised tariff sheet addresses the directed change to ANR's tariff provisions to effect the removal of the provision which permitted ANR to factor in a 25 percent discount adjustment to ANR's base rate recovery of Viking costs.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20999 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–89–000]

East Tennessee Natural Gas Company; Notice of Filing of Refund Report

August 13, 1996.

Take notice that on July 30, 1996, East Tennessee Natural Gas Company (East Tennessee) tendered for filing a refund report detailing the allocation to its firm customers of the refund received from the Gas Research Institute (GRI). The refund represents the GRI's overcollection of $296,405.00 from East Tennessee during 1995.

East Tennessee states that this refund report is being made to comply with the Commission Order issued February 22, 1995, in Docket No. RP95–124–000. The report indicates that the pro rata refunds to the affected customers were made through adjustments to their respective July 1996 invoices.

East Tennessee notes that copies of the refund report were served on each of its customers, interested state commissions, and all persons on the Commission's service list for this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections

385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before August 20, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20995 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–335–000

East Tennessee Natural Gas Company; Notice of Tariff Filing

August 13, 1996.

Take notice that on August 7, 1996, East Tennessee Natural Gas Company (East Tennessee), submitted for filing to become part of its FERC Gas Tariff, Second Revised Volume 1, the following revised tariff sheet to be effective on September 5, 1996:

Second Revised Sheet No. 143

East Tennessee states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's policy prohibiting re-releases of the same firm capacity to the same replacement shipper at less than the maximum tariff rate during the prescribed 28-day period, unless posted for bidding, where the re-released capacity is the same capacity as—or overlaps—the previous month's released capacity. 18 CFR 284.243(h)(2). See Tennessee Gas Pipeline Company, 71 FERC ¶ 61,265, p. 62,057 (1995); Texas Eastern Transmission Corporation, 71 FERC ¶ 61,235, p. 61,905 (1995).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 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 this 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 available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21004 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–95–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 13, 1996.

Take notice that on August 7, 1996, El Paso Natural Gas Company (El Paso), tendered for filing two Transportation Service Agreements (TSAs) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Fourth Revised Sheet No. 1 to El Paso's FERC Gas Tariff, Second Revised Volume No. 1–A (Volume No. 1–A Tariff) to become effective September 6, 1996.

El Paso states that on July 8, 1996, El Paso and Pemex entered into a firm TSA with an effective date of January 1, 1996, for service under El Paso's Rate Schedule FT–1. Additionally, on April 17, 1996, El Paso and Pemex entered into an interruptible TSA with an effective date of February 28, 1996, for service under El Paso's Rate Schedule IT–1. El Paso states that the TSAs contain language which differs from El Paso's Volume No. 1–A Form of Transportation Service Agreements and General Terms and Conditions, since provisions in Exhibit C allow for additional time for remittance of payment.

Therefore, El Paso is filing both agreements pursuant to Section 154.1(d) of the Commission's Regulations to request acceptance of the Exhibit C substitute provisions by the Commission to permit those provisions to take effect. The tendered tariff sheet has been revised to reference the TSAs on the Table of Contents contained in El Paso's Volume No. 1–A Tariff pursuant to Section 154.112(b) of the Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20997 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–172–002]

Koch Gateway Pipeline Company; Notice of Compliance Filing

August 13, 1996.

Take notice that on August 7, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets in to be effective April 12, 1996:

Substitute First Revised Sheet No. 1408
Substitute Third Revised Sheet No. 1409

Koch states that these revised tariff sheets are filed to comply with the Commission ''Order Denying Rehearing in Part'' issued July 23, 1996 in Docket No. RP96–172–001. As directed, Koch revised the tariff sheets to state that Koch will provide notice of a change in primary receipt or delivery point after the change has been executed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21002 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–243–000]

Long Island Lighting Company; Notice of Filing

August 13, 1996.

Take notice that on July 5, 1996, Long Island Lighting Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 23, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20991 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–88–000]

Midwestern Gas Transmission Company; Notice of Filing of Refund Report

August 13, 1996.

Take notice that on July 30, 1996, Midwestern Gas Transmission Company (Midwestern) tendered for filing a refund report detailing the allocation to its firm customers of the refund received from the Gas Research Institute (GRI). The refund represents the GRI's overcollection of $206,228.00 from Midwestern during 1995.

Midwestern states that this refund report is being made to comply with the Commission Order issued February 22, 1995, in Docket No. RP95–124–000. Midwestern states that the report indicates that the pro rata refunds to the affected customers were made through adjustments to their respective July 1996 invoices.

Midwestern notes that copies of the refund report were served on each of its customers, interested state commissions, and all persons on the Commission's service list for this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before August 20, 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 available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20994 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–334–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

August 13, 1996.

Take notice that on August 7, 1996, Midwestern Gas Transmission Company (Midwestern), submitted for filing to become part of its FERC Gas Tariff, Second Revised Volume 1, the following revised tariff sheet, to be effective on September 5, 1996:

Second Revised Sheet No. 90

Midwestern states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's policy prohibiting re-releases of the same firm capacity to the same replacement shipper at less than the maximum tariff rate during the prescribed 28-day period, unless posted for bidding, where the re-released capacity is the same capacity as—or overlaps—the previous month's released capacity. 18 CFR 284.243(h)(2). See Tennessee Gas Pipeline Company, 71 FERC ¶ 61, 265, p. 62,057 (1995); Texas Eastern Transmission Corporation, 71 FERC ¶ 61,235, p. 61,905 (1995).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 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 this 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 available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21003 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–695–000]

Mississippi River Transmission Corporation; Texas Eastern Transmission Corporation; Notice of Application for Abandonment

August 13, 1996.

Take notice that on August 7, 1996, Mississippi River Transmission Corporation (MRT), 1600 Smith Street, Houston, Texas 77002 and Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas, filed, in Docket No. CP96–695–000, a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of the exchange of natural gas under MRT's Rate Schedule X–1 in its FERC Gas Tariff, Original Volume No. 2 and Texas Eastern's Rate Schedule X–66 in its FERC Gas Tariff, Original Volume No. 2, all as more fully set forth in the application.

MRT and Texas Eastern state that the exchange service, which was originally certificated in Docket No. CP74–210, is no longer required and has been terminated by written consent of both parties. MRT and Texas Eastern further state that no facilities will be abandoned nor will there be any service impact to MRT's or Texas Eastern's customers as a result of the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 3, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the

Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MRT or Texas Eastern to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20993 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–331–001]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

August 13, 1996.

Take notice that on August 8, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of September 1, 1996:

Sub. Original Sheet No. 211A

National states that this filing corrects a typographical error in its August 2, 1996, filing in Docket No. RP96–331–000 to reflect proposed changes to National's Firm and Interruptible Rate Schedules to provide options for customers to purchase storage and/or transportation service at negotiated rates.

National requests the Commission waive its Regulations, to the extent necessary, to permit the proposed tariff sheets to become effective on September 1, 1996. In this regard, the Commission declared that it does not intend to suspend negotiated rate filings and will grant waiver of the 30-day notice requirement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.11). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21001 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2438–000]

New York State Electric & Gas Corporation; Notice of Filing

August 13, 1996.

Take notice that on July 10, 1996, New York State Electric & Gas Corporation tendered for filing pursuant to Section 206 of the Federal Power Act (FPA), Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, and in compliance with the Commission's Final Rule in Docket Nos. RM95–8–000 and RM94–7–001, ''Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,'' III FERC Stats. & Regs. ¶31,036 (Order No. 888), an Open Access Transmission Tariff, First Revised Version (Tariff).

NYSEG requests that the Tariff and proposed rates become effective on July 9, 1996. NYSEG has requested waiver of the filing and notice requirement of the Commission's regulations for good cause shown.

NYSEG served copies of the filing upon the persons listed on a service list submitted with its filing, including each of its existing wholesale customers and the state regulatory authority for each state in which its existing wholesale customers are served.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 23, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20992 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–137–002]

Northern Natural Gas Company; Notice of Compliance Filing

August 13, 1996.

Take notice that on August 7, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheet, proposed to be effective March 1, 1996:

Substitute Original Sheet No. 237A
2 Substitute Original Sheet No. 237B

Reason for Filing:

On February 1, 1996 and March 29, 1996, in Docket No. RP96–137–000, Northern filed tariff sheets to recover, pursuant to Order No. 528, take-or-pay settlement costs relating to the period prior to November 1, 1993. On July 23, 1996, the Commission issued an Order in Docket No. RP96–137–000 directing Northern to file revised tariff sheets.

Northern states that this filing is to comply with the Commission's Order.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21000 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1663–000; EC96–19–000; EL96–48–000]

Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company; Notice of Technical Conference and Potential Broadcast of Technical Conference

August 13, 1996.

Take notice that the Commission Staff will convene a two-day technical conference in the captioned proceedings to be held on Thursday, September 12 and Friday, September 13, 1996, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The technical conference will commence at 10:00 a.m. each day and will be open to all interested persons. The technical conference will address a number of issues related to the applications in the captioned proceedings. A tentative agenda is contained in the Attachment.

Persons wishing to speak at the technical conference must submit a request to make a statement in Docket Nos. ER96–1663–000, EC96–19–000, and EL96–48–000. The request should clearly specify that it concerns the WEPEX technical conference and must specify the name of the person desiring to speak and the party or parties the speaker represents. The request must also include a brief synopsis of the issue or issues the speaker wishes to address as well as the speaker's position on the issue or issues. All requests must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 on or before Friday, August 23, 1996.

The Commission anticipates that the number of persons desiring to speak at the conference may exceed the time allotted. Therefore, based on the requests to participate, the Commission Staff will put together panels of speakers representing a broad spectrum of interests and views for each panel. The Commission will issue a further notice listing the speakers and panels for the technical conference.

In addition, all interested persons are invited to submit written comments addressing topics discussed at the technical conference. (There is no need to reiterate comments that already have been made in pleadings filed in these dockets.) Comments must be received on or before Monday, September 23, 1996. The comments should be no longer than 25 pages in length, double spaced, on 8½″ x 11″ paper, with standard margins. Parties submitting comments must submit fourteen (14) written copies of their comments and also must submit two copies of the file on a computer diskette, one in Wordperfect 5.1 format, and one in a DOS file in the ASCII format (with 1″ margins and 10 characters per inch.). The two computer files should be labeled (—.WP and —.ASC) to avoid confusion. Comments must include a one page executive summary and must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 and reference Docket Nos. ER96–1663–000, EC96–19–000, and EL96–48–000. All written comments will be placed in the Commission's Public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. The Commission also will make all comments publicly available on its EBB.

Broadcast of Technical Conference

If there is sufficient interest, the Capitol Connection will broadcast the technical conference on September 12 and 13, 1996, to interested persons. Persons interested in receiving the broadcast for a fee should contact Julia Morelli at the Capitol Connection (703–933–3100) no later than September 3, 1996.

In addition, National Narrowcast Network's Hearings-On-the-Line service covers all FERC meetings live by telephone so that anyone can listen at their desk, from their homes, or from any phone without special equipment. Call (202) 966–2211 for details. Billing is based on time on-line.

CPUC Comments

At the Commission's August 1, 1996, technical conference, the California Public Utilities Commission (CPUC) indicated that it would be filing its comments on a number of issues in these proceedings by August 15, 1996. The Commission intends to allow interested parties to file comments regarding the CPUC submission within two weeks of that filing. The Commission will issue a further notice when the CPUC makes such filing.

FOR FURTHER INFORMATION CONTACT:

Stephen T. Greenleaf, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0430.

David E. Mead, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0538.

Hollis J. Alpert, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0783.

Lois D. Cashell,

Secretary.

Attachment

Thursday, September 12, 1996

Tentative Agenda

Panel 1—Market Power

The panel will consider the market power analyses presented by the Applicants, including related topics, such as the role of demand-side bidding; the effect of any performance-based ratemaking; the role of the Power Exchange; the appropriate monitoring program; any mitigation measures that may be needed; and the effect of zones on market power; as well as other issues concerning market power that participants wish to address.

Panel 2—Transmission Pricing

The panel will consider transmission pricing issues, including cost recovery and access charges; market efficiency; cost shifting; congestion management issues, the appropriate use of zones; and treatment of losses; as well as other issues concerning transmission pricing that participants wish to address. The Commission Staff is interested in comments addressing the extent to which the Commission's capacity reservation tariff (CRT) proposal would interact with WEPEX transmission pricing.

Panel 3—Transmission Expansion

The panel will consider transmission expansion issues, including who builds such facilities, who decides whether such facilities are to be built, who pays for the facilities, the proper incentives to ensure that necessary transmission expansion facilities are built; as well as other issues concerning transmission expansion that participants wish to address.

Panel 4—Transmission Rights/TCCs

The panel will consider transmission rights and Transmission Congestion Contracts (TCCs) in the context of pools and bilateral arrangements; the role of financial versus physical rights, i.e, arrangements that confer the option to perform as opposed to the obligation to perform; as well as other issues concerning transmission rights and TCCs that participants which to address. The Commission Staff is interested in comments addressing the interaction of the WEPEX transmission rights and TCCs with the Commission's pending CRT proposal.

Friday, September 13, 1996

Tentative Agenda

Panel 5—ISO Facilities and Operations

The panel will consider the transmission-distribution split; the ISO integration of national, regional, and individual transmission owner reliability criteria; which criteria will take precedence if there are conflicts; what control of transmission will be transferred from utilities to the ISO; and the incentives the ISO will have to achieve

efficiency in its operations; as well as other issues concerning ISO facilities that participants wish to address.

Panel 6—Bidding and Settlements

The panel will consider the integration of PX bidding and bilateral schedules; the types of information that should flow among the PX, ISO, and market participants; the advantages and disadvantages of an ISO/PX separation; the costs of operations; how, when, and by whom unit commitments should be determined; pricing of ancillary services; and the role of economic criteria in determining curtailments of must-run and must take units in overgeneration situations; as well as other issues concerning bidding and settlements that participants wish to address.

Panel 7—Role of Scheduling Coordinators

The panel will consider the functions, responsibilities, and qualifications of Scheduling Coordinators, including, for example, whether the Scheduling Coordinators are the sole communication link between the ISO and its customers, both during normal system conditions and during emergencies; as well as other issues concerning Scheduling Coordinators that are of concern to the participants.

[FR Doc. 96–20998 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–90–000]

Tennessee Gas Pipeline Company; Notice of Filing of Refund Report

August 13, 1996.

Take notice that on July 30, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a refund report detailing the allocation to its firm customers of the refund received from the Gas Research Institute (GRI). The refund represents the GRI's overcollection of $654,157.00 from Tennessee during 1995.

Tennessee states that this refund report is being made to comply with the Commission Order issued February 22, 1995, in Docket No. RP95–124–000. Tennessee states that the report indicates that the pro rata refunds to the affected customers were made through adjustments to their respective July invoices.

Tennessee notes that copies of the refund report were served on each of its customers, interested state commissions, and all persons on the Commission's service list for this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before August 20, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20996 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–336–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

August 13, 1996.

Take notice that on August 7, 1996, Tennessee Gas Pipeline Company (Tennessee), submitted for filing to become part of its FERC Gas Tariff, Fifth Revised Volume 1, the following revised tariff sheet to be effective on September 5, 1996:

Second Revised Sheet No. 328

Tennessee states that the purpose of this filing is to comply with the Commission's policy prohibiting re-releases of the same firm capacity to the same replacement shipper at less than the maximum tariff rate during the prescribed 28-day period, unless posted for bidding, where the re-released capacity is the same capacity as—or overlaps—the previous month's released capacity. 18 CFR 284.243(h)(2). See Tennessee Gas Pipeline Company, 71 FERC ¶ 61,265, p. 62,057 (1995); Texas Eastern Transmission Corporation, 71 FERC ¶ 61,235, p. 61,905 (1995).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 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 this 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 available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21005 Filed 8–15–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–15–29–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 13, 1996.

Take notice that on August 8, 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 supplement Transco's July 22, 1996, Tracker Filing in Docket No. TM96–15–29–000 (July 22 filing) in order to reflect the currently effective demand rates charged by National Fuel Gas Supply Corporation (National Fuel) under (a) its Rate Schedules X–42 and SS–1, the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (b) its Rate Schedules X–54 and SS–1, the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–2, and (c) 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). Transco's July 22 filing failed to recognize a change in National Fuel's demand billing components from an Mcf basis to a Dt basis. Transco also failed to reflect a $100,000 transportation discount received from National Fuel for its Rate Schedule X–54 in calculating Transco's SS–2 rates.

In order to correct these errors, Transco states that it is submitting substitute tariff sheets herein as replacements for the SS–2, LSS and NIPPs–SE tariff sheets included in the July 22 filing. 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, and Section 8.01(I) of Transco's NIPPs–SE Rate Schedule X–315.

Transco states that included in Appendices B and C attached to the filing are explanations of the rate changes and details regarding the computation of the revised Rate Schedules LSS, SS–2, and NIPPs–SE rates.

Transco states that copies of the filing are being mailed to each of its LSS, SS–2, and NIPPs–SE customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21006 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–16–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 13, 1996.

Take notice that on August 7, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Twenty-eighth Revised Sixth Revised Sheet No. 28, to be effective August 1, 1996.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. The tracking filing is being made pursuant to Sections 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff.

Transco states that included in Appendix B attached to the filing is the explanation of the rate changes and details regarding the computation of the revised Rate Schedule S–2 rates.

Transco states that copies of the filing are being mailed to each of its S–2 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, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21007 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–84–000, et al.]

Trakya Elektrik Uretim ve Ticaret A.S., et al.; Electric Rate and Corporate Regulation Filings

August 12, 1996.

Take notice that the following filings have been made with the Commission:

1. Trakya Elektrik Uretim ve Ticaret A.S.

[Docket No. EG96–84–000]

On August 5, 1996, Trakya Elektrik Uretim ve Ticaret A.S. (''Applicant''), with its principal office at Bugday Sokak No. 2/9 Kavaklidere, Ankara, Turkey, filed with the Commission an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Turkish joint stock company. Applicant will be engaged directly and exclusively in owning an approximately 478 MW combined cycle gas-fired electric generating facility located on the Marmara Sea, near Istanbul, Turkey. Electric energy produced by the facility will be sold at wholesale to Turkiye Elektrik Uretim, Iletisim A.S. In no event will any electricity be sold to consumers in the United States.

Redetermination of exempt wholesale generator status is sought to reflect that certain United States electric companies have become affiliates and/or associate companies of Applicant.

Comment date: August 30, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CHI Power Marketing, Inc.

[Docket No. ER96–2640–000]

Take notice that on August 6, 1996, CHI Power Marketing, Inc. (CHIPM), petitioned the Commission for acceptance of CHIPM Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. CHIPM is a Delaware corporation, and operates non-utility generating facilities in the United States.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. The City of Summersville, West Virginia Noah Corp. and Gauley River Power Partners, L.P.

[Docket No. ER96–2642–000]

Take notice that on August 6, 1996, the City of Summersville, West Virginia, Noah Corp. and Gauley River Power Partners, L.P. (Applicants) filed with the Federal Energy Regulatory Commission Summersville Hydroelectric Project FERC Rate Schedule No. 1, an Agreement for the Sale and Purchase of Electric Energy between Applicants and Appalachian Power Company and for certain blanket authorizations and waivers of the Commission regulations.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER96–2500–000]

Take notice that on July 23, 1996, Arizona Public Service Company tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with Tohono O'odham Utility Authority.

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Company

[Docket No. ER96–2502–000]

Take notice that on July 23, 1996, Puget Sound Power & Light Company tendered for filing an amendment to its agreement with the Bonneville Power Administration (Bonneville) filed in Docket No. ER94–1111–000.

A copy of the filing was served on Bonneville.

Puget states that the amendment is intended to reinstate the interconnection, on a temporary, non-firm basis, for non-firm transmission for Bonneville to the City of Blaine's customers.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER96–2629–000]

Take notice that on August 5, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Western. The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from the filing date. Copies of the filing have been served on Western, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. National Gas & Electric L.P.

[Docket No. ER96–2630–000]

Take notice that on August 5, 1996, National Gas & Electric L.P. (NG&E), tendered for filing with the Federal Energy Regulatory Commission a request for Commission approval of NG&E's acceptance as a member of the Western Systems Power Pool (WSPP). NG&E was notified by letter dated November 27, 1995, that its application to join the WSPP had been approved by the WSPP Executive Committee. NG&E requests that the Commission waive its prior notice requirements to allow its WSPP membership to become effective November 28, 1995.

A copy of the filing was served on the WSPP.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Upper Peninsula Power Company

[Docket No. ER96–2631–000]

Take notice that on August 5, 1996, Upper Peninsula Power Company (UPPCO), tendered for filing a proposed Power Service Agreement for sales of electricity to the City of Gladstone, Michigan. UPPCO states that the rates established in the Power Service Agreement for 1996 will result in a decrease in revenues from sales to Gladstone of approximately 10.1% annually. UPPCO has asked to make the proposed Power Service Agreement effective on October 5, 1996.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. The Washington Water Power Company

[Docket No. ER96–2632–000]

Take notice that on August 5, 1996, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission (FERC) pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Clatskanie People's Utility District previously approved as an unsigned service agreement.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Electric Power Company

[Docket No. ER96–2634–000]

Take notice that on August 6, 1996, Maine Electric Power Company (MEPCO), tendered for filing Service Agreements with Central Maine Power Company and Bangor Hydro-Electric Company for Firm Point-to-Point Transmission Service, the form of which is contained as an Attachment to MEPCO's pro forma tariff for open access transmission service.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Tosco Power Inc.

[Docket No. ER96–2635–000]

Take notice that on August 6, 1996, Tosco Power Inc. (Tosco Power), tendered for filing pursuant to Section 205, 18 CFR 385.205 a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the date of the order.

Tosco Power intends to engage in electric power and energy transactions as a marketer. In transactions where Tosco Power sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Tosco Power is not in the business of generating, transmitting, or distributing electric power.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER96–2636–000]

Take notice that on August 6, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with the Village of Rockville Centre under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to the Village of Rockville Centre.

NUSCO requests that the Service Agreement become effective July 31, 1996.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. South Carolina Electric & Gas Company

[Docket No. ER96–2637–000]

Take notice that on August 6, 1996, South Carolina Electric & Gas Company (SCE&G), tendered for filing proposed wholesale rate changes applicable to requirements and open access transmission tariff customers. SCE&G proposes an effective date 60 days after the date of filing. Additionally, SCE&G requests waiver of the Commission's fuel adjustment clause regulation, 18 CFR 35.14, in order to permit the pass through of costs of emission allowances charged to Account 509 and included in Account 555 used to make wholesale sales under its requirements tariff.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2638–000]

Take notice that on August 6, 1996, Northern States Power Company (Minnesota)(NSP), tendered for filing a Transmission Service Agreement between NSP and Interstate Power Company.

NSP requests that the Commission accept the agreement effective July 27, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2639–000]

Take notice that on August 6, 1996, Northern States Power Company (Minnesota)(NSP), tendered for filing a Transmission Service Agreement for NSP Wholesale under the Northern States Power Company Transmission Tariff.

NSP requests that the Commission accept the agreement effective July 9, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Houston Lighting & Power Company

[Docket No. ER96–2641–000]

Take notice that on August 6, 1996, Houston Lighting & Power Company

(HL&P), tendered for filing an executed transmission service agreement (TSA) with Morgan Stanley Capitol Group, Inc. (Morgan Stanley) for Economy Energy Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of July 23, 1996.

Copies of the filing were served on Morgan Stanley and the Public Utility Commission of Texas.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Northern Indiana Public Service Company

[Docket No. ER96–2643–000]

Take notice that on August 7, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Rainbow Energy Marketing Corporation.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Rainbow Energy Marketing Corporation pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of August 15, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER96–2644–000]

Take notice that on August 7, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Jpower, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Jpower, Inc. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of August 15, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Minnesota Power & Light Company

[Docket No. ER96–2645–000]

Take notice that on August 7, 1996, Minnesota Power & Light Company, tendered for filing signed Service Agreements with Southern Companies, which is comprised of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company under its Wholesale Coordination Sales Tariff to satisfy its filing requirements under this tariff.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Portland General Electric Company

[Docket No. ER96–2646–000]

Take notice that on August 2, 1996, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff, (Docket No. OA96–137–000) executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with the Eugene Water and Electric Board and USGen Power Services, L.P.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreements to become effective July 9, 1996.

Copies of this filing were served upon Eugene Water and Electric Board and USGen Power Services, L.P.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2647–000]

Take notice that on August 2, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Transmission Service Agreement between NSP and Heartland Energy Services.

NSP requests that the Commission accept the agreements effective July 3, 1996, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Northeast Utilities Service Company

[Docket No. ER96–2650–000]

Take notice that on August 7, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to PECO Energy Company (PECO) under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to PECO.

NUSCO requests that the Service Agreement become effective August 8, 1996.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. InterCoast Power Marketing Company

[Docket No. ER96–2651–000]

Take notice that on August 7, 1996, InterCoast Power Marketing Company (IPM), 666 Grand Avenue, P.O. Box 657, Des Moines, Iowa 50309, tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving IMP's application for membership in WSPP. IPM requests that the Commission amend the WSPP Agreement to include it as a member.

IPM requests an effective date of August 2, 1996, for the proposed amendment. Accordingly, IPM requests a waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon WSPP Members and the WSPP General Counsel.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Citizens Lehman Power Sales

[Docket No. ER96–2652–000]

Take notice that on August 7, 1996, Citizens Lehman Power Sales, on behalf of the CL Sales Subsidiaries, tendered for filing initial FERC electric service tariffs, Rate Schedules No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Cleveland Electric Illuminating Company

[Docket No. ER96–2633–000]

Take notice that on August 6, 1996, Cleveland Electric Illuminating Company (CEI) tendered for filing an electric power sales agreement between CEI and Industrial Energy Applications, Inc.

Comment date: August 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21022 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–690–000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

August 12, 1996.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP96–690–000]

Take notice that on August 5, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–690–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate approximately 16,000 feet of 30-inch pipeline and appurtenant facilities in Dakota and Washington Counties, Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the proposed pipeline is required in order to assure operational integrity, providing reliability in meeting its service obligations and maintaining deliveries of certificated volumes to transportation customers.

Northern states further, that the estimated cost of the proposed construction is $10,900,000.

Comment date: September 3, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP96–691–000]

Take notice that on August 5, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP96–691–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a dual line tap assembly in Hubbard County, Minnesota, under Great Lakes' blanket certificate issued in Docket No. CP90–2053–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes requests authorization to construct and operate a dual 4-inch line tap assembly and associated piping so as to interconnect its mainline and loopline with a meter station to be constructed, owned and operated by Northern Minnesota Utilities, a Division of UtiliCorp United Inc. (NMU) in Hubbard County, Minnesota. Great Lakes estimates that the cost of constructing the new line tap assembly will be approximately $100,000 which will be reimbursed to it by NMU.

Great Lakes states that this proposal is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed line tap will have no impact on Great Lakes' system-wide peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Comment date: September 26, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. K N Interstate Gas Transmission Company

[Docket No. CP96–694–000]

Take notice that on August 6, 1996, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP96–694–000 a request pursuant to Sections 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212) for authorization to install and operate fourteen new delivery taps under K N Interstate's blanket certificate issued in Docket No. CP83–140–000, et al., pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N Interstate proposes to install and operate fourteen new delivery taps located in Yuma County, Colorado; Kearny County, Kansas; Adams, Buffalo, Hamilton, Scottsbluff, Thayer, Webster, and York Counties, Nebraska; and Goshen County, Wyoming. Eleven of these taps will be added as delivery points under an existing transportation agreement between K N Interstate and K N Energy, Inc. (K N) and will be used by K N to facilitate the delivery of natural gas to direct retail customers. The other three taps will be added to facilitate delivery of gas to end users on behalf of Interenergy Corporation.

Comment date: September 26, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP96–697–000]

Take notice that on August 7, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed a request with the Commission in Docket No. CP96–697–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to establish a new point of delivery to Orwell Natural Gas Company (ONG), in Trumbull County, Ohio, authorized in blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to establish a new point of delivery for firm transportation service and would provide the service pursuant to Columbia's Blanket Certificate issued in Docket No. CP86–240–000 under existing authorized rate schedules and within certificated entitlements. Columbia states that ONG has requested the new point to provide additional transportation for residential service. As part of the firm transportation service to be provided, Columbia proposes to reassign the Maximum Daily Delivery Obligations (MDDOs) by amending ONG's GTS Agreement to reduce the MDDOs at the existing ONG delivery points

(MS730993 and MS730996) by 125 Dth/day each and reassign 250 Dth/day to the proposed new point of delivery (MS734296). Columbia states that there would be no impact on Columbia's existing peak day obligations to its other customers as a result of the proposed new point of delivery. The estimated cost to establish the new point of delivery would be approximately $16,630, including gross-up for income tax purposes. Columbia further states that ONG has agreed to reimburse Columbia 100% of the actual total cost of the proposed construction.

Comment date: September 26, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–21023 Filed 8–16–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5555–3]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; CWA Section 404 State Assumed Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 18, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0220.07.

SUPPLEMENTARY INFORMATION:

Title: Clean Water Act (CWA) Section 404 State Assumed Programs (OMB Control No. 2040–0168; EPA ICR No. 0220.07) expiring 10/31/96. This is a request for extension of a currently approved information collection. This renewal incorporates the burden for Tribal Assumption of the Section 404 Permit Program, separately approved under OMB Control No. 2040–0140 through 04/30/98.

Abstract: Section 404(g) of the Clean Water Act (CWA) authorizes states/tribes to assume the Section 404 permit program. States/tribes must demonstrate that they meet the applicable statutory and regulatory requirements (40 CFR Part 233) for an approvable program. Specified information and documents must be submitted by the State/tribe to EPA to request program assumption. Once the required information and documents are submitted and EPA has a complete assumption request package, the statutory time clock for EPA's decision either to approve or deny the State/tribe's assumption request starts. The information contained in the assumption request is made available to the other involved federal agencies (Corps of Engineers, Fish and Wildlife Service, and National Marine Fisheries Service) and to the general public for review and comment.

States/tribes must have the ability to issue permits that comply with the 404(b)(1) guidelines—the environmental review criteria. States/tribes and the reviewing federal agencies must be able to review proposed projects to evaluate and/or minimize anticipated impacts. EPA's state program regulations establish recommended elements that should be included in the State/tribe's permit application so that sufficient information is available to make a thorough analysis of anticipated impacts. These minimum information requirements are based on the information that must be submitted when applying for a Section 404 permit from the Corps of Engineers.

EPA is responsible for oversight of assumed State/tribal programs to ensure that the assumed programs are in compliance with applicable requirements and that State/tribal permit decisions adequately consider and minimize anticipated impacts. States/tribes must evaluate their program annually and submit an annual report to EPA assessing their program. EPA's state program regulations establish minimum requirements for the State/tribal annual report.

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 04/04/96 (61 FR 15068); no comments were received.

Burden Estimates: The annual public reporting and recordkeeping burden for a State/Tribal assumption request is estimated to average 520 hours per one-time response, with 2 States/tribes

applying per year, for an annual respondent burden of 1,040 hours.

The annual public reporting and recordkeeping burden for State/Tribal permit application information is estimated to average 5 hours per one-time response, with an estimated 4,000 permit applicants per year, for an annual respondent burden of 40,000 hours.

The public reporting and recordkeeping burden for a State/Tribal annual report is estimated to average 80 hours per response for 2 States/tribes per year, for an estimated total annual burden of 160 hours.

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.

Send comments regarding the burden estimates, or any other aspect of the information collection including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 0220.07 and OMB Control No. 2040–0168 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, 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: August 13, 1996.

David Schwarz,

Acting Director, Regulatory Information Division.

[FR Doc. 96–21080 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5556–3]

Agency Information Collection Activities Under OMB Review; EPA ICR Nos. 659.07, 660.06, 663.06, 1178.04, and 1415.03

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected costs and burdens; where appropriate, they include the actual data collection instruments.

DATES: Comments must be submitted on or before September 18, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to the appropriate EPA ICR Number: 659.07, 660.06, 663.06, 1178.04, or 1415.03.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Industrial Surface Coating: Large Appliances (Subpart SS); EPA ICR No. 659.07; OMB No. 2060–0108. This is a request for an extension of a currently approved collection.

Abstract: Owners or operators of each surface coating operation in a large appliance surface coating line must provide EPA, or the delegated State authority, with one-time notifications and reports, and must keep records as required of all facilities subject to the general NSPS (New Source Performance Standards) requirements. In addition, facilities subject to this subpart must install devices to measure and record operating temperatures, and must notify EPA or the State regulatory authority of the date upon which the demonstration of the equipment performance commences. Owners or operators must report all periods of emissions in excess of the standard. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

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. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on 03/26/96 (61 FR 13172).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 23 hours per response. This estimate 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: Large appliance surface coating lines.

Estimated No. of Respondents: 294.

Frequency of Collection: Quarterly.

Estimated Total Annual Burden on Respondents: 29,512 hours.

Estimated Total Annualized Cost Burden: $618,000.

Title: NSPS for Metal Coil Surface Coating (subpart TT) (EPA ICR No. 660.06; OMB No. 2060–0107). This is a request for an extension of a currently approved collection.

Abstract: The provisions of the subpart apply to the following affected facilities in a metal coil surface coating operation: (1) Each prime coat operation; (2) each finish coat operation; and (3) each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously. Owners or operators of subject facilities must provide EPA, or the delegated State regulatory authority, with one-time notifications and initial compliance reports, and must keep records, as required of all facilities subject to the general NSPS requirements. Owners and operators of subject facilities must notify EPA or the State regulatory authority of the date upon which demonstration of the compliance devices commences. In addition, the owner or operator of the subject facilities must install and operate devices that control emissions and that measure and record the operating characteristics of those devices. Where compliance is achieved through the intermittent use of a control device, reports must include separate values of the weighted average VOC content of coatings used with and without the control device in operation.

Where compliance is achieved through the use of an emission control device that destroys VOCs, reports must include the combustion temperature for thermal incinerators, and the gas temperature both upstream and downstream of the incinerator catalyst bed. Owners or operators of subject facilities must report all emissions in excess of the standard quarterly. The notifications and reports enable EPA or the state delegated regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

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. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on 03/26/96 (61 FR 13172).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 24 hours per response. This estimate 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: Facilities having the following metal coil surface coating operations: (1) Prime coat operations, (2) finish coat operations; and (3) prime and finish coat operations combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously.

Estimated No. of Respondents: 143.

Frequency of Collection: Quarterly.

Estimated Total Annual Burden on Respondents: 13,839 hours.

Estimated Total Annualized Cost Burden: $279,000.

Title: NSPS for Beverage Can Coating (Subpart WW) (EPA ICR No. 663.06; OMB No. 2060–0001). This is a request for an extension of a currently approved collection.

Abstract: The provisions of this subpart apply to the following affected facilities in beverage can surface coating lines: (1) Each exterior base coating operation; (2) each over varnish coating operation; and (3) each inside spray coating operation. The owner or operator of an affected facility must provide EPA, or the delegated State regulatory authority, with one-time notifications and initial compliance reports, and must keep records, as required of all facilities subject to the general NSPS requirements.

In addition, owners or operators of affected facilities that apply only coatings with VOC content less than that specified in the regulations must provide a list of coatings and the VOC content of each coating used. Where one or more coatings do have VOC content higher than that specified in the regulation, owners or operators must install measuring and recording devices and report on specified operating characteristics of their equipment based on how compliance is achieved. If compliance is achieved through the use of thermal incineration the owner or operator must install equipment to measure and report on the temperature of the combustion gases upstream and downstream of the incinerator or combustion chamber. If compliance is achieved through the use of catalytic incineration, the owner or operator must install equipment to measure and report on upstream and downstream temperatures of the catalytic bed. If compliance is achieved through the use of a solvent recovery system, the owner or operator must install equipment to measure and report the amount of solvent recovered by the system for each affected facility.

The owner or operator of an affected facility must also notify EPA or the State regulatory authority of the date upon which demonstration performance commences. Owners or operators must report all periods of emissions in excess of the standard, and must report on monitoring system performance quarterly. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

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. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on 03/26/96 (61 FR 13172).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 29 hours per response. This estimate 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: Owners or operators of beverage can surface coating lines.

Estimated No. of Respondents: 24.

Frequency of Response: Quarterly.

Estimated Total Annual Burden on Respondents: 3,092 hours.

Estimated Total Annualized Cost Burden: $50,000.

Title: Standards of Performance of Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI), Reactor Processes (Subpart RRR) (OMB Control No. 2060–0269; EPA ICR No. 1178.04). This is a request for an extension of a currently approved collection.

Abstract: The EPA uses the information collected under this part to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved.

Owners or operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These

notifications, reports and records are required, in general, of all sources subject to NSPS.

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 with a 60-day comment period soliciting comments on this collection of information was published on 06/11/96 (61 FR 29555).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62 hours per response. This estimate 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: Synthetic organic chemical manufacturers.

Estimated No. of Respondents: 203.

Frequency of Collection: semiannual.

Estimated Total Annual Burden on Respondents: 20,440 hours.

Estimated Total Annualized Cost Burden: $102,200.

Title: NESHAP for PCE Dry Cleaning Facilities (Subpart M) (OMB Control No. 2060–0234; EPA ICR No. 1415.03). This is a request for renewal of a currently approved information collection request.

Abstract: These standards apply to owners or operators of dry cleaning facilities that use perchloroethylene (PCE). Owners or operators of such facilities must provide EPA, or the delegated State regulatory authority, with the one-time notifications and reports. The owners or operators must also perform weekly monitoring (or biweekly for the smallest facilities) and must keep records for 5 years. The notification and reports enable EPA or the delegated State regulatory authority to determine whether the appropriate control technology is installed and properly operated and maintained, and to schedule inspections and/or compliance assistance activities. The responses to this information collection are mandatory under Clean Air Act section 112 and 40 CFR Part 63, Subpart M. The responses are not anticipated to be kept confidential due to the nature of the information collected; however, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR Part 2.

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 26, 1996 (61 FR 13172). No comments were received.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 9 hours per response for new dry cleaning facilities and zero hours per response for existing dry cleaning facilities. The public recordkeeping burden is estimated to average 48 hours per respondent for a total 1,192,879 hours. 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: Dry cleaning facilities.

Estimated Number of Respondents: 25,090.

Frequency of Response: weekly or biweekly.

Estimated Total Annual Hour Burden: 1,212,055 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for the information in any of these collections, 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 the appropriate EPA ICR Number and OMB Control Number 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.

August 13, 1996.

David Schwarz,

Acting Director, Regulatory Information Division.

[FR Doc. 96–21084 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5556–1]

Performance Partnership Grants for State and Tribal Environmental Programs: Revised Interim Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The ''Performance Partnership Grants for State and Tribal Environmental Programs: Revised Interim Guidance'' is the revised version of the Performance Partnership Grant (PPG) guidance dated December 1995. The revisions reflect the change in year and the existence of Congressional authority to award PPGs. A few other minor clarifications were also made. This revised guidance will serve as the operating guidance for States and Tribes interested in applying for PPGs.

PPGs are intended to provide States and Tribes with greater flexibility to address their highest environmental priorities, improve environmental performance, achieve administrative savings, and strengthen partnerships between EPA and the States or Tribes.

FOR FURTHER INFORMATION CONTACT: Juanita Smith, Office of Water (4102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Telephone: (202) 260–6226, FAX: (202) 260–5711, or Jack Bowles, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, Telephone: (303) 312–6315, FAX: (303) 312–6067.

SUPPLEMENTARY INFORMATION: PPGs are a powerful funding tool that EPA is offering to eligible States and Tribes. A PPG is a multi-program grant made to a State or Tribal agency from funds otherwise available for categorical grant programs. A State or Tribe can combine funds from 2 or more of 16 eligible grant

programs into 1 or more PPGs. Recipients may then use PPGs to fund activities that are within the cumulative eligibilities of the 16 eligible grant programs.

EPA encourages States and Tribes to take advantage of PPGs. PPGs enable States and Tribes to better direct their funding toward their most critical environmental problems and address multi-media high priority strategies such as community-based environmental protection, pollution prevention, and environmental justice. States and Tribes interested in pursuing PPGs should work in partnership with their Regional office to develop a PPG that funds solutions to the highest environmental priorities and ensures that EPA statutory and program requirements are met.

Additional contacts for information on PPGs are:

Headquarters:
Bruce Feldman, Chief, Grants Policy, Information and Training or Ellen Haffa, Grants Administration Division, U.S. EPA (3901F), 401 M Street, SW, Washington, DC 20460, (202) 260–2523.

Region 1:
Robert Goetzl, Chief, Strategic Planning Office, CSP, U.S. EPA—Region I, John F. Kennedy Federal Building, One Congress Street, Boston, Massachusetts 02203, (617) 565–3378.

Region 2:
Tierre Jeanne, Chief, Grants and Contracts Management Branch, U.S. EPA—Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–3402.
Dennis Santella, U.S. EPA—Region II, 290 Broadway, Strategic Planning and Multi-media Programs Branch, New York, NY 10007–1866, (212) 637–3746.

Region 3:
Mary Zielinski, Robert Picollo, Grants and Audit Management Branch, U.S. EPA—Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215) 566–5415 (Mary Zielinski), (215) 566–5405 (Robert Picollo).

Region 4:
Michelle Glenn, U.S. EPA—Region IV, 345 Courtland Street, Atlanta, GA 30365, (404) 347–7109 ext. 6878.

Region 5:
Tom Jackson, Acquisition and Assistance Branch (MC–10J), U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, Illinois 60604, (312) 886–7523.

Region 6:
Brenda Durden, Chief, Program Planning and Grants Branch, U.S. EPA—Region VI, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6510.
Joe Massey, Grants Management Office, U.S. EPA—Region VI, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7408.

Region 7:
Carol Rompage, Grants Management Officer, U.S. EPA—Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.

Region 8:
Tony Medrano, Director, Office of Grants, Audit and Procurement, U.S. EPA—Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6336.
Jack Bowles, U.S. EPA—Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6315.

Region 9:
Melinda Taplin, Chief, Grants Management Section (P–4–4), U.S. EPA—Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1693.

Region 10:
Denise Baker, U.S. EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

Dated: August 13, 1996.

Dana Minerva,

Deputy Assistant Administrator, Office of Water.

Kerrigan Clough,

Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance, Region VIII.

Performance Partnership Grants Guidance

Executive Summary

Performance Partnership Grants (PPGs)

A PPG is a multi-program grant made to a State or Tribal agency by the U.S. Environmental Protection Agency (EPA) from funds allocated and otherwise available for categorical grant programs. PPGs provide States and Tribes with the option to combine funds from two or more categorical grants into one or more PPGs.

Purpose

- Flexibility. States and Tribes will have the flexibility to address their highest environmental priorities across all media and establish resource allocations based on those priorities, while continuing to address core program commitments.
- Improved Environmental Performance. States and Tribes can: (1) more effectively link program activities with environmental goals and program outcomes; and (2) develop innovative pollution prevention, ecosystem, and community-based strategies.
- Administrative Savings. Recipients and EPA can reduce administrative burdens and costs by greatly reducing the numbers of grant applications, budgets, workplans, and reports.
- Strengthened Partnerships. EPA will develop partnerships with States and Tribes where both parties share the same environmental and program goals and deploy their unique resources and abilities to jointly accomplish those goals.

Authority

- Authorization for PPGs is contained in the 1996 Omnibus Consolidated Rescissions and Appropriations Act (PL 104–134).
- Authority applies to funds from sixteen program grants funded from EPA's State and Tribal Assistance Grants (STAG) appropriation.

Eligibility

- All States and federally recognized Indian Tribes (including environmental, health, agriculture, and other State/Tribal agencies) eligible to receive more than one categorical grant in Fiscal Year (FY) 1997 are eligible to receive PPGs.
- Local agencies are eligible if they: (1) Are eligible under state authority to implement EPA funded programs; and (2) receive direct funding from EPA for two or more of the eligible grant programs.
- PPGs do not affect State or Tribal agency ''pass-through'' grants to local or other agencies.
- State/Tribal agency eligibility is subject to the authority of the governor or State legislature, or Tribal authorities, as appropriate.

Application

- States and Tribes may apply for PPGs for any period after enactment of statutory authority for the PPG program (April 26, 1996) and may convert FY 1997 categorical grants to a PPG during the year.
- PPG program commitments are the programmatic basis for the PPG award and grant accountability. Commitments may consist of environmental indicators, performance measures (including measures of activity), and narrative descriptions of program activities or program elements. PPG program commitments must have core program elements and performance measures, as defined by appropriate environmental statutes, regulations and EPA or State policy. PPG program commitments may be contained in categorical workplans, in an Environmental Performance Agreement

(EnPA) or in a Tribal Environmental Agreement (TEA).

Funding and State/Tribal Cost Share

- EPA's allocation of grant funds to States will be the same whether the funds are awarded as PPGs or categorically. PPGs do not adversely affect a Tribe's ability to compete for any grant.
- PPGs may fund any activities eligible to be funded under sixteen specified EPA grant authorities.
- FY 1995 and prior year federal grant funds must be expended as categorical grants and may not be carried over into PPGs, because authority for PPGs begins with FY 1996 federal funds.
- EPA's policy and goal is that States and Tribes should continue to spend, in effect, the same amount of funds for environmental programs under PPGs as under categorical grants. Although, under PPGs, recipients will have the flexibility to realign those resources among environmental programs based on negotiated priorities in the EnPA/TEA, the total resources in the State or Tribe, both Federal and non-Federal, targeted to environmental programs should not be reduced, except in exceptional circumstances, for example, where a State or Tribe reduces funds across all State or Tribal agencies. Thus, the required cost share (based on the match or maintenance of effort requirements of the categorical grants included in the PPG) will be the same under PPGs as under categorical grants, unless EPA determines that there are exceptional circumstances justifying a reduction in cost share for a PPG for the year that the PPG is awarded.
- Applicants may have a single PPG budget for accounting and reporting purposes.

State/Tribal Options

- The content of each PPG depends on its purpose and the extent to which a recipient would like to deviate from traditional categorical workplans or enter the National Environmental Performance Partnership System (NEPPS). Below are the four major categories of PPGs defined in this guidance (applicants may suggest other options):
- Administrative flexibility and savings only (with categorical workplans);
- Administrative and programmatic flexibility (with categorical workplans and a supplemental EnPA or TEA that explains the rationale and benefits of the PPG);
- Administrative and programmatic flexibility; single/multimedia EnPA/TEA in place of categorical workplans; and
- Any of the above PPG options and entering NEPPS.

EPA Regional Implementation

- EPA's Regional Administrators will be the designated approval and award officials for PPGs, with the ability to redelegate authority within their Regions.
- EPA Regions will designate a single grant Project Officer for each PPG.
- When State/Tribal PPG proposals present significant national policy issues, EPA Regions will consult with EPA's national program managers.

Table of Contents

Section 1. Overview of the U.S. Environmental Protection Agency's Performance Partnership Grant Program

Section 1.1 Scope of Guidance

A Performance Partnership Grant (PPG) is a single grant made to a State or Tribe from grant funds allocated and otherwise available for existing categorical grant programs. PPGs are voluntary and provide States and Tribes with the option to combine funds from two or more categorical grants into one or more PPGs. Recipients may receive their financial assistance as one or more PPG(s), or continue receiving funds as categorical grants. States and Tribes may apply for these grants for any period after enactment of statutory authority for the PPG program (April 26, 1996).

This Guidance provides direction for: (1) States and Tribes that apply for and receive PPGs; (2) States applying for PPGs and entering the National Environmental Performance Partnership System (NEPPS); and (3) EPA Regions that approve and award PPGs. This document remains in effect until superseded by statute, federal regulation, or amended guidance. EPA expects to develop and issue regulations governing PPGs during FY 1996/1997. The Agency expects extensive stakeholder involvement in the development of the regulation.

Section 1.2 Organization

The guidance is divided into two parts. Sections 1–3 present an overview of the new program, explaining the purpose and expected benefits of PPGs, and identifying eligible grants, recipients, and activities. Sections 4–8 provide more specific guidance to Federal, State, and Tribal officials responsible for implementing the grant program. States and Tribes are presented a variety of options for how to apply for and manage PPGs. Section 4, in particular, helps applicants identify reasons for applying for a PPG and provides application criteria. Each section includes a checklist of steps and options.

Section 1.3 Purpose and Goals

President Clinton announced Performance Partnership Grants on March 16, 1995, as part of the Administration's program to ''Reinvent Environmental Regulation.'' PPGs are a part of EPA's continuing effort to reinvent government and build State and Tribal environmental protection capacity. This voluntary program is a response to recommendations from various internal and external stakeholders [1] to:

- Increase State and Tribal flexibility,
- Help States and Tribes improve environmental performance,
- Achieve administrative savings by streamlining the grants process, and
- Strengthen EPA partnerships with State and Tribal governments.

These previous recommendations have formed the basis for the purposes and goals of the PPG program, as described below:

Flexibility. PPGs will provide States and Tribes with flexibility to address their most pressing environmental priorities across all media and establish resource allocations based on those priorities, while continuing to address core program commitments. They will allow recipients to more effectively administer core statutory, regulatory and non-regulatory programs. Recipients will also be able to develop innovative multimedia programs and activities that are difficult to fund with separate categorical grants. Moreover, recipients will have the option of developing multi-year planning.

Improved Environmental Performance. PPGs will encourage States and Tribes to improve

[1] The National Performance Review (''Creating a Government That Works Better and Costs Less''), September 1992; EPA's State-EPA Capacity Steering Committee recommendations in ''Strengthening Environmental Management in the United States, Report of the Task Force to Enhance State Capacity,'' Environmental Protection Agency, Office of the Administrator, EPA–270–R–93–001, July 1993; and the National Academy of Public Administration Report (''Setting Priorities, Getting Results: A New Direction for EPA''), April 1995.

environmental performance and more effectively link program goals with program outcomes. Recipients will be able to establish priorities across all environmental programs, and integrate strategic goals such as pollution prevention and community-based environmental protection into their program planning. States and Tribes will be able to achieve these objectives by:

- Coordinating and integrating activities which are now fragmented under many statutes, regulations, and programs,
- Conducting assessments to define environmental problems and set priorities with the public,
- Targeting the most significant environmental problems,
- Building environmental protection capacity through training, technical assistance and other appropriate means, and
- Using common sense and multimedia environmental protection strategies such as pollution prevention, ecosystem protection, community-based protection and environmental justice.

The emphasis on improved environmental performance will be achieved by increasing the use of environmental indicators and program performance measures, and decreasing the reporting of inputs and activities. Performance measures, to be developed jointly by EPA and each State or Tribe, will gauge progress toward agreed upon goals (see Section 1.7). Improved performance measures will provide the foundation for better reporting, monitoring, and assessment of State, Tribal and national environmental conditions. EPA expects that targeted strategic approaches and improved performance measures, when implemented together, will accelerate long-term systematic improvements in environmental conditions.

Administrative Savings. EPA, States, and Tribes expect PPGs to reduce administrative burdens and costs by reducing the overall number of grant applications, workplans, reports and certifications associated with traditional, single media federal grants. Multi-year planning may also contribute to reduced administrative costs.

Strengthened Partnerships. EPA will develop partnerships with States and Tribes where both parties share the same environmental and program goals and jointly deploy their unique resources and abilities to accomplish those goals.

Section 1.4 Summary of State and Tribal Options

The PPG program is designed to provide maximum flexibility to States and Tribes. Potential recipients may apply for a PPG to replace all sixteen eligible categorical grants, some of the sixteen (e.g., water media PPG), or portions of some of them (e.g., an enforcement PPG). As summarized below and explained in Section 4, application options are streamlined and tailored to the specific goals of the PPG. States and Tribes may apply for a PPG using any of the following four options. EPA will also work with States and Tribes on any other options they would like to propose.

I. Administrative flexibility and savings based on categorical workplans (see Section 4.3).

II. Administrative and programmatic flexibility with an Environmental Performance Agreement (EnPA)/Tribal Environmental Agreement (TEA) that includes categorical workplans. In this case, the categorical workplans still establish most of the PPG program commitments. The EnPA/TEA also explains the rationale for the PPG and identifies any additional PPG program commitments (see Section 4.4).

III. Administrative and Programmatic flexibility based on an EnPA/TEA that replaces categorical workplans. In this case, the EnPA/TEA establishes all of the PPG program commitments (see Section 4.5).

IV. Application for a PPG under any of the three previous options and entering the National Environmental Performance Partnership System (NEPPS). Currently, this option is available for States, although interested Tribes could explore applicability with their Regional Administrator (see Section 4.6).

Section 1.5 Relationship to Oversight Reform and the National Environmental Performance Partnership System

On May 17, 1995, State and EPA leaders signed a ''Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System'' (NEPPS). The objective of signing this agreement was to accelerate the transition to a new working relationship between EPA and the States—one which reflects the advancement made in environmental protection over the preceding two decades by both the States and EPA.

Key goals that this new partnership agreement share with PPGs are: to allow States and EPA to achieve improved environmental results by directing scarce public resources toward the highest priority, highest value activities; to provide States with greater flexibility to achieve those results; to improve public understanding of environmental conditions and choices; and to enhance accountability to the public and taxpayers. Other key goals of the NEPPS partnership agreement are increased reliance on self-management by State programs and a differential approach to oversight that serves as an incentive for State programs to perform well, rewarding strong programs and freeing up federal resources to address problems where State programs need assistance.

NEPPS and PPGs share many of the same objectives. Of course, States may apply for PPGs without entering NEPPS (and vice-versa) . But where States wish to apply for PPGs and enter NEPPS, the processes and documentation are integrated and, where appropriate, identical. The Environmental Performance Agreement (EnPA) is a document that is common to both PPGs and NEPPS. For States doing both, the EnPA will allow the processes and documentation to be integrated (see Section 4.6 for more details).

Section 1.6 Relationship to Tribal Environmental Agreements

On July 14, 1994, Administrator Browner issued a nine-point Action Memorandum on Strengthening Tribal Operations which called for the development of Tribal-EPA Workplans (now called Tribal Environmental Agreements) to be jointly developed by EPA Regions and Tribes. In consultation with the Agency's Tribal Operations Committee, the American Indian Environmental Office and the National Indian Work Group developed guidance for the Tribal Environmental Agreements (TEAs). Currently, EPA Regions and Tribes are developing TEAs, many of which will be signed within the next year.

The TEAs (signed by the EPA Regional Administrator and the Tribal leadership) are a planning tool which clearly identifies the Tribe's environmental objectives, expected outcomes and resource needs, and implementation and management assistance needed from EPA. The Agreements establish the Tribe's environmental objectives over 3–4 years, but are flexible documents that can be changed to meet Tribal needs.

For Tribal PPGs, the TEAs will substitute for the State EnPAs. In order for the TEAs to also compare with the EnPAs as commitment documents (PPG Options II–IV) where Tribes/States are shifting funds, Tribes wanting to enter a PPG will have to include a specific

section on the anticipated PPG funds and program commitments in addition to the other elements of the TEA or as an amendment to an already signed TEA. By using the TEA instead of the EnPA, the Tribes will not have to conduct two planning processes. The addition of a commitment section to the TEA should ensure that PPG funding shifts, commitments, and expectations are clearly defined in one document signed by both the Tribe and EPA. TEAs will be required for Tribes wherever EnPAs are required for States.

Section 1.7 PPG Accountability and Performance Measures

All PPGs will be required to contain a legally binding set of program commitments. These program commitments will be the primary basis for evaluating the success of a PPG. Some program commitments will be required in all PPGs because they are required by statute, regulation, standing legal agreements between EPA and States/Tribes (e.g., Delegation Agreements), or National Program Manager/Regional program guidance. Others will be optional.

For the purposes of this PPG guidance, program commitments are ''a description of the PPG program goals and objectives, results and benefits expected, a plan of action, and quantifiable projections of the program and environmental accomplishments to be achieved and the performance measures to be used. Where accomplishments cannot be quantified, activities can be listed to show the schedule of accomplishments. PPG program commitments are the legal basis for the expenditure of federal grant funds and the recipient's matching requirement'' (see Section 1.8).

EPA will continue to work with States and Tribes to define the elements of program commitments, including national environmental goals and performance measures.

As EPA and States/Tribes negotiate program commitments under PPGs, they are encouraged to use performance measures that measure program and environmental outcomes and outputs more often than they now do. Performance measures that are PPG program commitments must be quantifiable, measurable, and verifiable. Specifically, EPA encourages all States and Tribes to adopt outcome and output-oriented performance measures that track program performance, environmental conditions and trends, and business environmental performance.

State/Tribal Program Performance measures suggest how effectively or reliably a State/Tribal Program is achieving its objectives. Measures may be outcome or output oriented. They may include, where appropriate and necessary, activity measures traditionally used to evaluate environmental programs.

Business Environmental Performance measures assess environmental behavior in the private sector.

Environmental Indicators are measures of actual changes in air and water quality, land use, and changes in living resources and human health.

Appropriate accountability provisions are essential in designing the new PPG program. A fundamental goal of EPA's efforts to design accountability provisions into PPGs is to begin moving Federal, State, and Tribal programs toward the use of results-oriented measures of environmental and program performance that are understandable and meaningful to the public. In recent years, EPA, States, and Tribes, with input from the stakeholders and the public, have embarked on new and innovative strategic directions and developed or tested innovative performance measures that are a natural fit to incorporate into PPGs. EPA believes that PPG performance measures should be consistent with ongoing EPA and State or Tribal initiatives, such as ''The New Generation of Environmental Protection: EPA's Five-Year Strategic Plan,'' [2] the National Environmental Goals Project, and EPA National Program performance measures (developed under the NEPPS initiative). Examples of some potential performance measures are included in Attachment 1. A more comprehensive list of optional environmental indicators may be found in ''Prospective Indicators for State Use in Performance Agreements'' prepared under a cooperative agreement with the Florida Center for Public Management, Florida State University. This report provides a preliminary list of national environmental indicators that may be helpful to States, Tribes and EPA looking for good ideas about available environmental indicators.[3]

Specific performance measures are required only if they are required by statute, regulation or standing legal agreements between EPA and States/Tribes (e.g., Delegation Agreements), or if EPA National Program Managers or Regions have required them in guidance or policy.

[2] EPA 200–B–94–002.

[3] To obtain a copy of the document, contact EPA's Office of Policy, Planning and Evaluation, at (202) 260–4909, or Florida State University at (904) 921–0423.

Section 1.8 Definitions

Agency—United States Environmental Protection Agency (EPA).

Categorical Grant—Media-specific or multimedia grant for a particular program or narrowly defined activities.

Environmental Performance Agreement (EnPA)—Broad strategic document containing negotiated environmental priorities and goals. The EnPA may also include specific program commitments that are incorporated by reference in the Performance Partnership Grant Agreement. A State may use this document as a means to implement NEPPS, even if the State does not apply for a PPG.

National Environmental Performance Partnership System (NEPPS)—A new approach to developing and implementing the State-EPA oversight relationship agreed to by the States and EPA. It contains seven principal components: (1) Increased use of environmental indicators; (2) a new approach to program assessments by States; (3) environmental performance agreements; (4) differential oversight; (5) performance leadership programs; (6) public outreach and involvement; and (7) joint system evaluation.

National Program Manager—Individual responsible for setting the direction and policy for the management of an EPA media or enforcement program on a National level.

Oversight Reform—Same as National Environmental Performance Partnership System (see above).

Performance Partnership Grant (PPG)—A PPG is a single grant made to a State or Tribe from grant funds allocated and otherwise available for more than one existing categorical grant program. PPGs are voluntary and will provide States and Tribes with the option to combine funds from two or more of their categorical grants into one or more PPGs. Recipients must be eligible to receive the categorical grants included in a PPG. However, the unique administrative requirements and limitations set forth in 40 CFR Part 35 Subpart A for each categorical program will not apply after the funding is approved for a PPG. Only those requirements that pertain to PPGs will be applicable.

Performance Partnership Grant Agreement—The legal instrument by which EPA will transfer money, property, services or anything of value to an eligible PPG grant recipient. The agreement will specify:

- Budget and project periods,
- Federal share of eligible program costs,

- Combined budget,
- PPG program commitments (see definition below), and
- Any terms and conditions.

Performance Partnership Grant Program Commitments—A description of the PPG program goals and objectives, results and benefits expected, a plan of action, and quantifiable projections of the program and environmental accomplishments to be achieved and the performance measures to be used. Where accomplishments cannot be quantified, activities can be listed to show the schedule of accomplishments. PPG program commitments are the legal basis for the expenditure of federal grant funds and the recipient's matching requirement. This guidance will commonly refer to PPG program commitments as consisting of goals, objectives, performance measures and program activities. A set of core program commitments must be included in the PPG Program Commitments. These core program commitments are based on requirements in statutes, regulations, standing legal agreements between EPA and States/Tribes (e.g. Delegation Agreements), and National Program Manager/Regional guidance.

Program Flexibility—Reduction of effort or elimination of a program element in order to invest in another media-specific or multimedia program element.

Tribal Environmental Agreement (TEA)—A planning tool (signed by the EPA Regional Administrator and the Tribal leadership) which clearly identifies the Tribe's environmental objectives, expected outcomes and resource needs, as well as implementation and management assistance needed from EPA. The Agreements establish the Tribe's environmental objectives over 3–4 years, but are flexible documents that can be changed to meet Tribal needs.

Section 2. Authority

Section 2.1 Statutory Authority

Authority for PPGs is contained in the 1996 Omnibus Consolidated Rescissions and Appropriations Act (P.L. 104–134). The authorizing language reads as follows:

> That beginning in fiscal year 1996 and each fiscal year thereafter, and notwithstanding any other provision of law, the Administrator is authorized to make grants annually from funds appropriated under this heading, subject to such terms and conditions as the Administrator shall establish, to any State or federally recognized Indian tribe for multimedia or single media pollution prevention, control and abatement and related environmental activities at the request of the Governor or other appropriate State official or the tribe.

Section 2.2 Other Authorities

The requirements of 40 CFR Part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' will apply to a PPG as they do to a categorical grant. Some limited exceptions to 40 CFR Part 31 may be necessary to accommodate these grants. EPA will manage such exceptions through the grant deviation process. Additional requirements are included in substantive program regulations, OMB Circulars A–87 and A–102, the EPA Assistance Administration Manual, EPA-State/Tribal Memoranda of Agreement (MOA), NPM-Regional Guidance and MOA, the NEPPS agreement signed on May 17, 1995 (for States entering NEPPS), and E.O. 12372, ''Intergovernmental Review of Federal Programs.''

Section 3. Eligibility

Section 3.1 Eligible Applicants

All States, territories, and Federally recognized Indian Tribes eligible to receive more than one of the categorical grants referred to in Section 3.2 are eligible to receive a PPG(s). Any duly authorized State or Tribal entity that currently receives or is eligible to receive EPA categorical program grants may request a PPG for the funds it administers. This may include agencies other than environmental agencies (e.g., agricultural and health agencies), where authorized by State/Tribal law. Agencies that now receive pass-through funding from a State or Tribe may continue to receive such funding subject to applicable State, Tribal or Federal law. For any agency that now receives direct Federal funding, but is not eligible for a PPG (e.g., local air districts), EPA will continue to make Federal funding available pursuant to existing categorical grant authorities. Eligibility for PPGs is subject to the appropriate State, Tribal, or Territorial executive or legislative authorities.

In the case of proposals which combine funds currently awarded to separate, duly authorized State or Tribal agencies—such as combining funds from an environmental department with funds from program grants to an agriculture or health department—a joint proposal signed by the appropriate officials should indicate a method for sharing funds in addition to demonstrating the eligibility, planning, accountability and evaluation elements of PPGs described in this guidance.

If program eligibility, formerly referred to as Treatment as State (TAS), is required for a Tribal applicant to be eligible to receive categorical funding for a specific program, the Agency will require the same eligibility if the Tribal applicant intends to include funds for that categorical grant in the PPG or to use PPG funds for activities under that program.

EPA encourages applicants to combine funds from as many categorical program grants as possible into a PPG to achieve maximum flexibility.

Section 3.2 Eligible Grant Programs

Funds available for the following sixteen grants identified in EPA's FY 1996 State and Tribal Assistance Grants (STAG) appropriation are eligible to be combined into a PPG in FY 1996:

1. Air pollution control (CAA section 105),
2. Water pollution control (CWA section 106),
3. Nonpoint source management (CWA section 319),
4. Water quality cooperative agreements (CWA section 104(b)(3)),
5. Wetlands program development (CWA section 104(b)(3)),
6. Public water system supervision (SDWA sections 1443(a) and 1451(a)(3)),
7. Underground water source protection (SDWA section 1443(b)),
8. Hazardous waste management (Solid Waste Disposal Act section 3011(a)),
9. Underground storage tank (Solid Waste Disposal Act section 2007(f)(2)),
10. Radon assessment and mitigation (TSCA section 306),
11. Lead-based paint activities (TSCA section 404(g)),
12. Toxics compliance and monitoring (TSCA section 28),
13. Pollution prevention incentives for States (PPA section 6605),
14. Pesticide enforcement (FIFRA section 23(a)(1)),
15. Pesticide applicator certification and training/pesticide program (FIFRA section 23(a)(2)), and
16. General Assistance Grants to Indian Tribes (Indian Environmental General Assistance Program Act of 1992). Only eligible Tribes can propose to include these funds in a PPG application.

Generally, grant funds that States combine into PPGs are those that provide for continuing, ongoing, environmental programs. Grants to capitalize Clean Water and Drinking Water State Revolving Funds, and other amounts specified for stated purposes in the STAG account, are not eligible for inclusion in PPGs.

Because all EPA grants to Tribes are awarded through a competitive or

discretionary process, Tribes will be allowed to include these grants in a PPG without adverse effects to their ability to compete for any grant. For competitive grants on the above list (e.g., pollution prevention incentives for States, wetlands program development, water quality cooperative agreements, general assistance program grants to Tribes) to be combined in a PPG, the State or Tribe must first be awarded the competitive grant, and must identify specific output measures as a condition for adding the funds to a PPG. A State or Tribe may include these grant output measures in its EnPA/TEA. EPA will add the funds to the PPG by a grant amendment.

Section 3.3 Eligible Activities

Recipients may use PPGs to fund activities that are within the cumulative eligibilities of the grants listed in Section 3.2. Within these eligibilities, a PPG may fund multimedia regulatory and non-regulatory activities that could be difficult to fund under any individual categorical grant. EPA, in consultation with the States and Tribes, has developed a list of activities indicative of those it hopes PPGs will encourage. The list does not indicate pre-approval of activities and is not intended to be exhaustive. It merely illustrates the kind of activities which States, Tribes, the Agency and other stakeholders have identified as difficult to conduct with categorical grants and for which PPGs would be appropriate.

Activities that PPGs may support, but are not limited to:

- Pollution prevention oriented multi-media rules, permitting, compliance assistance, inspections, enforcement, training, and facility planning (e.g., one industry/one rule, one stop emission reporting, permitting and compliance assistance),
- Non regulatory pollution prevention technical assistance, technology development and diffusion, and partnerships with accountants, financiers, insurers, risk managers, urban planners, chemists, product designers and marketers, and other professions,
- Ecosystem, community, sector, watershed, or airshed environmental protection strategies (e.g., watershed targeted NPDES permits, empowerment zones),
- Support of Agency initiatives including Common Sense Initiative & Regulatory Reinvention (e.g., XL strategy implementation, market based strategies, local community risk assessment, negotiated rulemaking, third-party auditing, self-certification for compliance),
- Environmental justice,
- Public outreach and involvement,
- Information clearinghouses,
- Environmental monitoring,
- Capacity building and environmental code development, and
- Integration of regulatory and non regulatory strategies.

Section 4. PPG Application Options

Section 4.1 Introduction

This chapter presents the application options for States and Tribes applying for a PPG(s). For program grants with budget periods beginning 10/1/96, applications are due by 8/1/96. Reimbursement for pre-award costs from 10/1/96 until the date of award are only available if EPA has received the application by 9/30/96. Applicants choosing to apply only for categorical grants for FY 1997 will continue to follow the current process and schedule for categorical grants.

Section 4.2 PPG Options

For FY 1997, EPA is providing PPG applicants with the following four application options:

I. Administrative flexibility and savings based on categorical workplans (see Section 4.3).

II. Administrative and programmatic flexibility with an Environmental Performance Agreement (EnPA)/Tribal Environmental Agreement (TEA) that includes categorical workplans. In this case, the categorical workplans still establish most of the PPG program commitments. The EnPA/TEA also explains the rationale for the PPG and identifies any additional PPG program commitments (see Section 4.4).

III. Administrative and Programmatic flexibility based on an EnPA/TEA that replaces categorical workplans. In this case, the EnPA/TEA establishes all of the PPG program commitments (see Section 4.5).

IV. Application for a PPG under any of the three previous options and entering the National Environmental Performance Partnership System (NEPPS). Currently, this option is available for States, although interested Tribes could explore applicability with their Regional Administrator (see Section 4.6).

In addition to these options, EPA will continue working with States and Tribes to identify other application options for implementing PPGs.

PPG applicants, like all State, local, and Tribal federal grant applicants, will continue to use the ''Application for Federal Assistance: State and Local Non-Construction Programs'' (Standard Form 424), including the required supporting documents. Submittal of this application by a Governor or other appropriate State or Tribal official will serve as the State's or Tribe's official request for a PPG.

Section 4.3 Option I. Applicants Seeking a PPG for Administrative Flexibility and Savings Based on Categorical Workplans

When an applicant has completed negotiation of its categorical grant workplans, the PPG program commitments will consist of those grant workplans. The PPG application should contain:

- First page of Standard Form 424—''Application for Federal Assistance,''
- Consolidated budget (separate categorical budgets totaled for funding in the PPG),
- A list of the grant programs (or portions thereof) from which funds will be reprogrammed to a PPG(s),
- A narrative statement explaining the rationale and expected benefits of the PPG (i.e., improved performance of the combined grant, administrative savings, reinvestments), and
- Categorical workplans proposed for inclusion in the PPG (same workplans submitted with categorical applications can be used).

Section 4.4 Option II. Applicants Seeking a PPG for Administrative and Programmatic Flexibility, Based on an EnPA/TEA That Includes Categorical Workplans

This section applies to applicants who will use PPGs to implement a new strategic direction, programmatic flexibility, or innovative environmental protection strategies, not already explained in categorical grant workplans. In this case, an EnPA/TEA will contain: the goals and rationale for the PPG; the categorical workplans that establish most of the PPG program commitments; and any additional PPG program commitments not contained in categorical workplans. The PPG Agreement would reference the categorical workplans and any other sections of the EnPA/TEA that contain PPG program commitments. The intent is to develop the EnPA in two phases. In the first phase, EPA and the applicant negotiate and agree on environmental priorities and goals. In the second phase, EPA and the applicant negotiate PPG program commitments to achieve these goals.

The PPG application should contain the following:

- First Page of Standard Form 424—''Application for Federal Assistance,''
- Single budget supporting the PPG, and
- An EnPA/TEA that includes:

- A list of grants (or portions thereof) from which funds will be reprogrammed to a PPG(s),
- Negotiated environmental priorities and goals,
- A narrative statement explaining the rationale and expected benefits (i.e., improved performance of the combined grant, administrative savings, disinvestments, reinvestments),
- Identification of EPA Roles and Responsibilities,
- PPG program commitments consisting of:
- Categorical workplans proposed for inclusion in the PPG (workplans submitted with categorical applications can be used), and
- Any additional multimedia or strategic PPG program commitments and performance measures,
- A description of public participation efforts (optional), and
- Evaluation criteria and procedure.

Section 4.5 Option III. Administrative and Programmatic Flexibility Based on an EnPA That Replaces Categorical Workplans

This section describes the elements of a PPG application based entirely on an EnPA/TEA that establishes PPG program commitments. The EnPA/TEA replaces the categorical workplans. The PPG Agreement would reference the sections of the EnPA/TEA that are PPG program commitments. In this case, a State or Tribe could: (1) Continue to make media or program the primary basis for organizing its PPG program commitments; or (2) organize PPG program commitments on some other primary basis (e.g., community-based environmental protection).

The PPG application should contain the following:

- First Page of Standard Form 424—''Application for Federal Assistance,''
- Single budget supporting the PPG, and
- An EnPA/TEA that includes:
- A list of grants (or portions thereof) from which funds will be reprogrammed to a PPG(s),
- Negotiated environmental priorities and goals,
- A narrative statement explaining the rationale and expected benefits (i.e., improved performance of the combined grant, administrative savings, disinvestments, reinvestments),
- Identification of EPA roles and responsibilities,
- PPG program commitments that include:
- Core program commitments, and
- Multimedia and additional media-specific program commitments,
- A description of Public Participation efforts (optional), and
- Evaluation.

The following explains in more detail some of the elements of the EnPA/TEA not previously addressed:

- *Negotiated Environmental Priorities and Goals.* This part of the EnPA/TEA is the product of negotiation between senior Regional officials and State or Tribal officials in positions to negotiate across grant programs, where this is appropriate. This part identifies the applicant's most significant environmental problems and the goals the applicant expects to achieve with the PPG. This strategic planning process reflects the applicant's priorities (as contained in any State or Tribal strategic plans or self-assessments), comparative risk studies or other risk-based approaches, and national priorities (enumerated in EPA's five-year strategic plan [4], the National Environmental Goals Project and National program priorities specified in EPA HQ/Regional Memorandums of Agreement). Major new strategic or program directions or investments/disinvestments should be identified here.
- *EPA Roles and Responsibilities in Supporting State or Tribal Efforts.* To strengthen the federal partnership with States and Tribes, the EnPA/TEA should describe how EPA will carry out its federal responsibilities and how it will support the State's or Tribe's environmental protection efforts. The negotiated agreement should include the program commitments (goals, performance measures, and/or program activities) the recipient expects to achieve under the PPG. The agreement should also set forth procedures (e.g., mid-year and end-of-year reviews, reporting requirements, joint activities) that EPA and the recipient will use for evaluating accomplishments, discussing progress, and making adjustments to meet milestones.
- *Core Program Commitments.* The EnPA/TEA must include core program commitments (goals, performance measures, program activities) derived from statutes, regulations, and standing legal agreements between EPA and States/Tribes (e.g., Delegation Agreements). As appropriate and negotiated between EPA Regions and recipients, core program commitments and performance measures should reflect National Program Manager/Regional guidance, EPA Headquarters-Regional MOA, Regional-State/Tribal MOA, and other EPA or State/Tribal policies. EPA should work with States and Tribes to balance the need to maintain core program requirements with the need to incorporate program flexibility and move toward program performance measures and environmental indicators. An EnPA/TEA may also include measures for which data sources are not yet available if there is a commitment to develop reliable data sources.
- *Public Participation.* States and Tribes should continue to use their current public participation processes in conjunction with PPGs. EPA believes that it is critical to involve all stakeholders in the process of determining environmental priorities and goals, and therefore strongly encourages States and Tribes to involve stakeholders in identifying priority environmental problems. Recognizing the role and contribution of general purpose and special purpose local governments in the Nation's overall protection of the environment, EPA strongly encourages States to engage local jurisdictions which would be affected by a PPG. EPA also encourages recipients to share with stakeholders the results of their goals and activities defined in the EnPA/TEA. Effective public participation will establish the foundation for greater program flexibility and the achievement of better environmental results.
- *PPG Evaluation.* The recipient should prepare a PPG annual report (as described in 40 CFR § 31.40(b)) as well as satisfy any other reporting requirements required in the PPG agreement. In addition to evaluating performance based on PPG program commitments, the recipient should identify any problems, delays or conditions which materially affected the recipient's ability to meet the PPG objectives, and any benefits that enabled the recipient to perform better than expected. EPA and the States/Tribes are also interested in knowing whether the work undertaken under the grant: (1) addressed the stated strategic priorities and goals; (2) achieved administrative cost savings; (3) where appropriate, improved environmental results (to the extent environmental performance measures were part of the PPG program commitments); and (4) improved EPA/grantee working relationships.[5] After reviewing the annual report, the EPA Project Officer will provide evaluation findings to the recipient and will include such findings in the official PPG file.

[4] ''The New Generation of Environmental Protection: EPA's Five-Year Strategic Plan,'' (EPA 200–B–94–002)

[5] The FY 1995 grant flexibility demonstration projects in New Hampshire, Massachusetts and North Dakota provide some useful lessons in evaluating combined grants. Updates on these projects are available from Regions I and VIII.

• *Evaluating the National PPG Program*. EPA will request the assistance of PPG recipients to evaluate the overall PPG process. Lessons learned from the FY 1996/1997 experience will be used to modify the program in subsequent years. The overall PPG grant process will be evaluated by EPA and program participants in order to understand how well it is being implemented as a national program. In addition to the criteria used to evaluate individual PPGs, national criteria will address whether PPGs: (1) led to greater State and Tribal flexibility; (2) resulted in States and Tribes adopting innovative environmental protection strategies; (3) changed polluter behavior; and (4) improved public health and the environment.

Section 4.6 Applicants Seeking a PPG and Entering the National Environmental Performance Partnership System (NEPPS) in FY 1997. [6]

This section applies to States interested in applying for a PPG and entering NEPPS. A State may choose to enter NEPPS in combination with any of the PPG options described above. In addition to providing the information for PPGs described in either Sections 4.3, 4.4, or 4.5, a NEPPS State would have to consult the May 17, 1995 NEPPS agreement for details of the NEPPS system.

Section 4.7 Converting Categorical Grants to a PPG During FY 1997

In FY 1997, for various reasons (e.g. converting to a fiscal year different than 10/1/96–9/30/97) a state may wish to convert from categorical grants to a PPG during the federal fiscal year. The following procedures apply to those applicants who receive a categorical grant(s) for the beginning of FY 1997 and desire to convert from a categorical grant(s) to a PPG(s).

The State or Tribe should submit applications for all FY 1997 categorical grants according to the current categorical application schedule. EPA will continue to award the applicant's categorical grants for FY 1997. To facilitate the applicant's receipt of its total annual grant funding the applicant should be prepared to indicate at the time of its categorical award whether it anticipates participation in a PPG in FY 1997. If so, the applicant should provide an estimated start date for the PPG. There is no deadline for submitting a PPG application to convert specified categorical grants during FY 1997. However, the sooner an application is submitted, the more advantages of the PPG the recipient will realize in FY 1997. Applicants should refer to Section 4 for additional instructions.

If an applicant then decides to convert to a PPG, the applicant must submit a PPG application and consult with the Regional Administrator to select a PPG start date. The Regional Administrator will arrange for the necessary deobligation and reprogramming of funds. Any unobligated FY 1996 or FY 1997 funds may be reprogrammed from the categorical grant to the PPG. However, sufficient funds must remain in the categorical grant for close-out until the final Financial Status Report (FSR) has been received. Upon receipt of the final FSR, any remaining unexpended funds in the categorical grant may be deobligated and reprogrammed into the new PPG. The Regional Administrator will then award the PPG. The FY 1997 categorical grant should be closed when appropriate and upon receipt of a final FSR funds will be reprogrammed into the PPG. Further instructions on conversion are contained in the ''FY 1996 Advice of Allowance Letter'' (June 25, 1996).

SUMMARY OF PPG APPLICATION REQUIREMENTS

PPG application elements	Applicants for a PPG seeking administrative flexibility only based on categorical grant workplans. Most elements already in categorical workplans	Applicants for a PPG seeking administrative and programmatic flexibility based on categorical grant workplans. EnPA/TEA addresses differences from categorical workplans	Applicants seeking admin. and program flexibility based on an EnPA/TEA that replaces categorical grant workplans
Standard Form 424—''Application for Federal Assistance'' (1st page).	Required	Required	Required.
EnPA/TEA	Optional	Required	Required.
Budget	Required	Required	Required.
Grant Selection	Required	Required	Required.
Rationale and expected benefits	Required	Required	Required.
Negotiated Environmental Goals and Priorities.	N/A	Required	Required.
EPA Roles and Responsibilities to Support State and Tribal Efforts.	Optional	Required	Required.
PPG Program Commitments	Required	Required	Required.
Categorical Workplans	Required	Required	N/A
Core Program Commitments	Required	Required	Required.
Multimedia/ strategic Program Commitments.	Optional	Encouraged	Encouraged.
Environmental Indicators	Optional	Optional	Optional.
Evaluation of PPG	Required	Required	Required.
Public Participation	Optional	Optional	Optional.

Key: N/A=Not applicable.
NOTE: States entering NEPPS also references May 17 NEPPS Agreements.

[6] Currently, this option is available for States, although interested Tribes could explore applicability with their Regional Administrator.

Section 5. EPA and recipient roles and responsibilities

Section 5.1 EPA headquarters

National Program Manager (NPM). The NPMs set national strategic direction and core program requirements and priorities for all environmental programs. In any circumstance where a State or Tribe proposes activities that will lead it to significantly deviate from NPM priorities or regulatory requirements, or raise issues of national consistency, the Regions will consult with the appropriate NPM. In many cases, NPMs also allocate national categorical grant funds to EPA's Regions based on an established allocation criteria.

Grants Administration Division (GAD). The GAD's responsibilities include: (1) Sponsoring Office for the Performance Partnership Grant Delegation of authority; (2) approving Office for deviations to 40 CFR Part 31 required to implement PPGs; and (3) sponsoring office for proposed PPG regulations (FY 1997).

Office of the Comptroller (OC). The OC's responsibilities include: (1) Distributing categorical grant funds to the Regions; (2) approving requests by the Regions to reprogram categorical grant funds into the PPG program element; and (3) upon request of Appropriations Committees providing periodic reports on the number of states participating in PPGs and the grant funds they are using.

Section 5.2 EPA Regions

Regional Administrator (RA). The RA is the designated approval and award official for PPGs with re-delegation authority to the Deputy Regional Administrator or the Division Director or equivalent level (See Section 7.1). The RA, or a senior regional official(s) designated by the RA, should conduct the initial negotiations with the applicant to establish environmental priorities and goals (See Section 4.5). The RA should notify NPMs when their programs are being incorporated into a PPG and should keep the NPMs informed of activities carried out under PPGs that affect the NPMs' programs.

The RA should also designate a single point of contact to serve as the Performance Partnership Grant Project Officer (PO) on each award. Because PPGs cross programs, the PO should coordinate negotiations with the recipient on behalf of all the relevant EPA programs. The RA may wish to designate a team of sub-project officers to support the designated Project Officer, or set additional criteria for designating the PO.

Regional Program Manager. The managers of all programs included in the PPG will jointly be the program managers of the PPG, as will other appropriate Regional management officials. Regional Program Managers: (1) Will at a minimum be consulted about/participate in negotiations with States and Tribes; (2) articulate Agency, NPM and Regional goals and priorities and work with the States and Tribes to incorporate them into the EnPA/TEA; (3) serve as the principal source for technical program assistance to States and Tribes; and (4) participate in State and Tribal program evaluation as defined by the EnPA/TEA. In any circumstance where a State or Tribe proposes activities that will lead it to significantly deviate from NPM priorities or regulatory requirements, or raise issues of national consistency, the Regions will consult with the appropriate NPM.

Regional Project Officer. As designated by the RA, the Performance Partnership Grant Project Officer (PO) will be the primary point of contact for the grant recipient. This individual will be responsible for coordinating all programmatic and technical aspects of the EnPA/TEA and PPG program commitments and the PPG agreement. All POs must have successfully completed the EPA training course ''Managing Your Financial Assistance Agreement—Project Officer Responsibilities.'' The POs should coordinate closely with the Regional Indian Coordinator/ Regional Indian Office for Tribal PPGs.

Regional Grants Management Office (GMO). Regional GMOs are responsible for carrying out all administrative functions associated with the receipt of the PPG application, processing of the PPG award, and post-award administrative management of the PPG grants. (These functions are the same as those for the award and management of categorical grants.)

Regional Budget Offices. Regional Budget Offices are responsible for submitting approval requests to Headquarters Budget Division for Regional reprogramming of funds from categorical program elements to the PPG program element and, upon approval, completing the reprogramming of the funds. Both the PPG award and obligation must include the State identifier code on transactions in IFMS.

Section 5.3 Recipients

Recipients may wish to designate a single point of contact for each PPG to serve as the counterpart to the EPA Project Officer. This individual would be responsible for coordinating all programmatic and technical aspects of the PPG as well as for all intra-State or intra-Tribal agreements. Recipients should identify these points of contact in their PPG application.

Section 6. Funding

Section 6.1 Project period and availability of funds

In consultation with the Regional Administrator, the applicant may choose to submit either annual or multi-year EnPAs/TEAs or workplans. Budget periods for PPGs will be for 12 months but the applicant has the flexibility to select, in consultation with the Regional Administrator, the specific start and end dates for the budget period. Project periods may remain open to reflect the continuing nature of PPGs. Project and budget periods may not begin before the date of enactment of PPG statutory authority (April 26, 1996).

Section 6.2 Award amounts and distribution of funds

National and Regional allocation of grant funds to State and Tribal recipients will be the same whether the funds are awarded as PPGs or categorically.

Section 6.3 Reprogramming of funds

EPA's Budget Division will continue to allocate grant funds in the current categorical program elements. Regional Budget Officers will request the reprogramming of funds into the PPG program element. The PPG program element is EY5H2B. For FY 1996, the reprogramming of funds to implement PPGs is exempt from the $500,000 Congressional reprogramming limitation. Reprogramming requests will be made only after the PPG project officer, EPA approval official and the Grants Management Office find the PPG application and PPG program commitments acceptable. The purpose statement/justification that should be included in the reprogramming request is:

Purpose: This action reprograms resources ($) from existing categorical grants, air ($.), water ($), etc. to support the implementation of the Performance Partnership Grant for the State/Tribe of _____. This transfer is authorized by the decision memorandum dated _____ and
Signed by _____.
Person to contact: _____
Phone: _____ (including area code)

Section 6.4 FY 1995 Carryover and Unexpended Prior Year Funds

Funds appropriated in FY 1995 and prior years that remain available for obligation, or that are deobligated,

should not be awarded in PPGs. The recipient, in consultation with the Regional Administrator, may choose to maintain FY 1995 and prior year unexpended balances by extending the existing categorical grants, consistent with limits established on carry-over by the Comptroller General, or by applying for a partial categorical grant for the next fiscal year to cover the unexpended funds. Project officers should inform recipients proposing to apply or to convert to a PPG of the need to maintain prior year accounts through extensions until FY 1995 and prior year funds are expended.

Funds recovered from an applicant's FY 1996 categorical grants will be available to fund PPGs awarded in FY 1997 and beyond, provided there is consistency with the appropriation and/or the underlying categorical program statutes and Comptroller Policy No. 88–09 ''Disposition of Unobligated Balances of Assistance Awards.'' FY 1997 carryover of unobligated balances will be allowed provided that the recipient uses the carryover award amount to support either ongoing programmatic goals, a multi-year PPG workplan, or those activities contemplated for the next PPG award cycle's goals.

If the PPG program commitments include activities that cannot be fully funded at the time of award, additional funding can be added as it becomes available. The Regions may also forward-fund PPG awards.

Section 6.5 Cost Share Requirements

EPA's policy and goal is that States and Tribes should continue to spend, in effect, the same amount of funds for environmental programs under PPGs as under categorical grants. Although, under PPGs, recipients will have the flexibility to realign those resources among environmental programs based on negotiated priorities in the EnPA/TEA, the total resources in the State or Tribe, both Federal and non-Federal, targeted to environmental programs should not be reduced. Thus, the required cost share (based on the match or maintenance of effort requirements of the categorical grants included in the PPG) will be the same under PPGs as under categorical grants, unless EPA determines that there are exceptional circumstances justifying a reduction in cost share for a PPG for the year that the PPG is awarded. The primary exception is where a State or Tribe reduces funds across all State or Tribal agencies. When the reduction is due to a non-selective reduction in the expenditures related to all programs and entities of the executive branch of the State or Tribal government, EPA also will allow reductions in environmental program resources.

It is also important to recognize that, when the categorical funds are reprogrammed into the PPG program element and the PPG is awarded, those funds lose their categorical nature. The recipient's minimum cost share requirement applies to the entire grant. The recipient cost share must be expended for performance of the approved PPG program commitments as reflected in the approved PPG budget of total estimated program costs, i.e., without regard to the original categorical source of federal funds and categorical activities. As the costs of performing PPG work are incurred, the recipient will be reimbursed the federal share of total expenditures based on the federal/recipient share ratios stated on the PPG grant award. While recipients must maintain adequate financial records of their cost share, EPA may not require categorical financial reporting by recipients or track categorical match shares or maintenance of effort (MOE) expenditures for those grant funds included in a PPG.

Recipients should calculate a single, composite minimum cost share for each of their PPGs. To calculate the minimum cost share for a PPG, start with the amount of federal dollars from each program (source of funds) going into the PPG. The minimum required cost share for each portion is determined by following the cost share requirements of the relevant categorical grant program (based on the source of funds). The minimum recipient cost share for the PPG is the sum of the minimum cost shares of the contributed components shown in the fourth column of the following example.

Example. A State applies for a PPG combining its Water-106, Nonpoint Source, UIC, UST, RCRA and Air-105 categorical grants. The portion of the federal categorical grant funding from each program designated by the recipient to be reprogrammed to the PPG is listed in the third column below. (This amount does not necessarily reflect all the Federal dollars available to the recipient for that specific categorical program. The recipient may choose to continue to receive some of the program's funding categorically.) The fourth column illustrates the minimum recipient cost share for each piece (based on the cost share requirements of the program that is the source of the funds). The fifth column notes the basis for the requirement. The total amount of federal money awarded in the PPG is the sum of the contributed portions dollars in the third column. The minimum recipient PPG cost share is the sum of the minimum recipient cost shares for each of the contributed portions shown in the fourth column.

Funding source	PPG total	Federal share	Recipient cost share	Basis of cost share
Water-106	1,239,064	1,087,995	[1] 151,069	MOE.
Nonpoint Source	924,333	554,600	[2] 369,733	MOE or 40% match.
UIC	78,796	59,097	19,699	25% match.
UST	216,667	162,500	54,167	25% match.
RCRA	465,989	349,492	116,497	25% match.
Air-105	2,290,230	1,374,198	[2,3] 916,132	MOE or 40% match.
PPG	5,215,079	3,587,882	1,627,297	PPG guidance.

[1] The Water 106 program has no match requirement. However, it has a MOE requirement based on recurrent expenditures in the FY year ending (1) June 30, 1971 or (2) October 1, 1977, if the State is expending funds awarded in any fiscal year for construction grants management under section 205(g). This requirement obligates a State to spend at least the base year amount of money each year without regard to the amount of the federal award. EPA will continue to use this MOE requirement amount to calculate recipient minimum cost share when the Water 106 program is part of a PPG.

[2] The Air 105 and the Nonpoint Source programs have both a match and an MOE requirement. The greater of the MOE or the match requirements of these two programs will be used to calculate the minimum cost share requirement for a PPG, when the programs are part of a PPG.

[3] Revenue generated by the collection of Clean Air Act Title V fees can only be used for the Title V Operating Permit program and cannot be used to meet cost share requirements for any grants, including PPGs as well as section 105 grants.

The minimum composite cost share for the PPG in this example is $1,627,297, which is 31.2% of the PPG total of $5,215,079. The percentage is based on the ratio between the total dollar value (Federal and non-Federal)

of each program, activity, etc., included in the PPG(s) and the dollar value of its respective cost sharing requirement. EPA uses this percentage to determine the recipient's share of each dollar expended for the PPG(s).

If a recipient chooses to split federal categorical funding between a PPG and a categorical grant, the minimum required cost share for the PPG will be directly related to the portion of the categorical grant funds moving to the PPG. The following is an example of how this would apply to the UST funding cited above. If half of the funding was maintained in a categorical grant ($81,250 went to both the PPG and the categorical grant), the minimum cost share for the PPG would be half of $54,167 or $27,083.50.

If the cost share requirement for a categorical grant is a minimum percentage of the total grant program (combined federal and recipient contributions), the minimum allowable recipient contribution can be calculated using a two step process. Following is an example of how this would apply to the RCRA funding above: (1) Divide the available federal funding by the maximum federal share ($349,492 divided by 75%). The result is the minimum total program amount (federal and State shares combined) for the grant ($465,989). (2) Subtract the federal contribution from the minimum total program amount to determine the minimum required recipient contribution.
($465,989 − $349,492 = $116,497. $116,497 represents 25% of the total.)

If a recipient decides to withdraw an environmental program with an MOE requirement from the PPG and seek funding for the environmental program under a categorical grant, the MOE requirement for the new categorical grant will be no less than the MOE requirement in the fiscal year immediately preceding the entry of the environmental program into the PPG. EPA may approve an adjustment to the MOE requirement for the new categorical grant if EPA determines that there are exceptional circumstances justifying such an adjustment. This requirement is a condition of receiving a PPG and, therefore, must be included in all PPG grant agreements.

Section 7. Administrative Information

Section 7.1 Delegation of Authority

The Regional Administrator is the designated approval and award official for PPGs with approval redelegation authority to the Deputy Regional Administrator or the Division Director level. References: Delegation #1–14—Assistance Agreements; Delegation # 1–101—Performance Partnership Grants.

Section 7.2 Grant Budget Information

Applicants may merge funding for all PPG programs and activities into a single budget for accounting and reporting purposes. This budget must display a breakdown of costs by object class categories on Standard Form 424B. For applicants proposing multi-year PPG program commitments, the applicant need only reflect object class costs for FY 1997. However, the budget information must accurately reflect the grant agreement and be able to be tracked to support the program outcomes and outputs cited in that grant agreement. The Regional Administrator may also require the applicant to submit a level of supplemental budget detail necessary to allow for adequate determination of the allowability, allocability, necessity, and reasonableness of each element of program costs. Required budget detail should not exceed levels supplied under previous EPA categorical grant awards.

Section 7.3 Certifications

States/Tribes may submit one set of grant certifications (i.e., anti-lobbying, debarment/suspension, SF424B—assurances and procurement) with the PPG application on an annual basis—bundled certifications.

Section 7.4 Standard Terms and Conditions

EPA will add standard terms and conditions to the PPG agreement as required by the authorities set forth in sections 2.1 and 2.2. The PPG agreement must cite the PPG program commitments as terms and conditions of the agreement. The Region may add any additional State or Tribal specific terms and conditions deemed appropriate and necessary on a case by case basis.

Section 7.5 Grants Information and Control System (GICS) Data

The following are the GICS codes for PPGs.

—Program Code: BG
—Description: Performance Partnership Grants
—Statutory Authority Code: 141
—Text: Appropriations Act of 1996 (PL–104–134)
—Regulatory Code: A4
—CFDA number: To be assigned

Section 8. Post-Award Requirements

Section 8.1 Pre-Award Costs

Consistent with 40 CFR § 35.141 and subject to the availability of funds, EPA will reimburse applicants for allowable costs incurred from the beginning of the approved budget period.

Section 8.2 Financial Management and Reporting

PPG recipients will continue to follow the regulations for Standards for Financial Management Systems contained in 40 CFR Part 31.20. Fiscal control and accounting procedures of the recipient applicant must be sufficient to permit preparation of Financial Status Reports for PPG awards.

PPG recipients must maintain accounting and financial records which adequately identify the source (i.e., Federal funds and match) and application of funds provided for PPG activities. These records should contain relevant information such as obligations, unobligated balances, outlays, expenditures and program income.

Recipients will track PPG funds to the total effort or costs incurred for the PPG work. EPA will reimburse the recipient for the federal share of the costs from the PPG budgetary program element. PPG costs will not be tracked to each of the original individual categorical source(s) of grant funding.

Section 8.3 Payment

To reduce paperwork and facilitate payment, EPA will encourage PPG recipients to receive electronic payments via the Automated Clearinghouse (ACH) System. Inability to qualify for an ACH method of payment will not preclude an otherwise eligible recipient from receiving a PPG award.

Section 8.4 Allowable Costs

OMB Circular A–87 (cost principles) and EPA regulations in 40 CFR Part 31 will apply to PPGs to determine the reasonableness, allowability, necessity and allocability of costs.

Section 8.5 Additions/Deletions of Programs From Existing PPGS.

States/Tribes may elect which categorical program(s) or project grants will be included in its established PPG award(s), consistent with Section 3.2. In general, once an annual PPG is awarded for a given fiscal year, EPA will authorize no programmatic deletions until the beginning of the next award cycle. Once PPG program commitments are approved and funds have been reprogrammed by EPA, the funds lose their categorical identity and cannot be pulled out by an applicant.

Funds for grants approved in the middle of the fiscal year and appropriate competitive grants may be

added to the PPG subject to PO approval. The PO and recipient will renegotiate the approved environmental performance agreement goals and revise the PPG program commitments and budgets. EPA will reprogram the funds to be added to a PPG. The recipient must submit a formal amendment to add funding to the PPG. EPA will process the amendments as expeditiously as possible, while maintaining fiduciary responsibility, to accommodate the recipient.

If a recipient chooses to add a categorical grant program to a two-year PPG, the match requirements of that program will then be calculated as part of the overall PPG composite match (see Section 6.5).

If the recipient drops a program at the end of a cycle, based on the recipient's decision to redirect its efforts and with the prior approval of the PPG PO, the PPG recipient shall be reimbursed for allowable costs incurred during the PPG project period.

If a recipient withdraws an environmental program with an MOE requirement from the PPG at the end of the award cycle and seeks funding for the program under a categorical grant, the MOE requirement for the new categorical grant will be no less than the MOE requirement in the fiscal year immediately preceding the entry of the environmental program into the PPG. EPA may approve an adjustment to the MOE requirement for the new categorical grant if EPA determines that there are exceptional circumstances justifying such an adjustment (see Section 6.5). This requirement is a condition of receiving a PPG and, therefore, must be included in all PPG grant agreements.

Section 8.6 Enforcement

If a recipient materially fails to comply with a term or condition in the PPG award, EPA may impose sanctions in accordance with 40 CFR § 31.43, including the conversion of a PPG back to individual categorical grants during the next award cycle.

Section 8.7 Disputes

The dispute process set forth in 40 CFR § 31.70 will apply to PPGs. Disagreements between the recipient and EPA regarding PPG applications, including PPG program commitments, priorities and/or related performance indicators, or PPGs themselves, including disallowances or enforcement actions, are to be resolved at the lowest level possible, i.e., the project officer.

The Regional Administrator designates the Dispute Decision Official—the next level of appeal after the project officer. Because of the multi-media nature of the PPG program, it is suggested that the Regional Administrator select a multi-media Division Director in Regions where applicable, or the Region's Senior Resource Official/Assistant Regional Administrator as the Disputes Decision Official to resolve disputes arising under the PPG assistance agreements.

The Regional Administrator will continue to be the final level of appeal at the Regional level. The Deputy Administrator or his/her designee will serve as the Headquarters Disputes Review Official to resolve disputes arising under PPG assistance agreements appealed to Headquarters.

Attachment 1—Sample Performance Measures

Below are examples of performance measures that fall into three categories:

- Program performance measures,
- Business environmental performance measures, and
- Environmental indicators.

State/Tribal Program Performance Measures suggest how effectively or reliably a State/Tribal program is operating, and are the ones we have traditionally relied on to judge State and Tribal programs. While these kinds of measures will still be required for PPGs, the States', Tribes' and EPA's goals are to reduce these to a minimum, make the ones we use more meaningful, and develop useful measures of cross-program activities such as multi-media pollution prevention, ecosystem management, etc. Measures could include:

—percentage of NPDES permit holders in significant non-compliance,
—percentage of enforcement actions taken within timely and appropriate guidelines,
—percentage of permits up-to-date,
—percentage of river, lake and estuary miles monitored,
—percentage of falsification rates in drinking water data,
—percentage of enforcement actions leading to supplement projects,
—number of permits avoided by helping companies reduce emissions below permit thresholds,
—number of multi-media inspections or permits,
—percentage of State or Tribal program personnel trained in pollution prevention, ecosystem management, or environmental justice, and
—number of innovative pilot programs (e.g., voluntary programs).

Business Environmental Performance Measures assess environmental behavior in the private sector. These measures can complement or substitute for environmental indicators that may be difficult or expensive to measure. Measures could include:

—compliance rates for particular sectors,
—percentage reductions in water generation rates (per unit product),
—percentage reduction in total emissions,
—percentage of facilities participating in voluntary pollution prevention programs and meeting their publicly stated pollution prevention goals,
—number of significant changes at any entity (public or private) that have been made as a result of compliance assistance in three categories: (1) notification, (2) regulatory requirements, and (3) environmental improvements,
—change in the compliance profile of a particular sector, regulated population, or community that is the focus of a compliance assistance initiative,
—percent of entities (public or private) within a particular sector, regulated population, or community that have received compliance assistance, and
—percent of facilities that participate in voluntary compliance assistance programs and come in to compliance within the requisite correction period.

Environmental Indicators measure changes in air, water and land quality parameters and human health. Measures could include:

—the percentage of population exposed to substandard air,
—the percentage of population exposed to substandard water,
—percentage of stream miles meeting designated uses,
—percentage reductions in air pollution such as VOCs, Sox, etc., and
—percentage reductions in dangerous blood-lead levels in children.

[FR Doc. 96–21085 Filed 8–16–96; 8:45 am]
BILLING CODE 6560–50–P

[FRL–5554–3]

Availability of Department of Energy Petition to EPA for a No-Migration Determination for the Waste Isolation Pilot Plant (WIPP) Under the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency announces the availability for public comment of a petition for a no-migration determination submitted to the Agency by the Department of Energy (DOE) for its Waste Isolation Pilot Plant (WIPP) on June 18, 1996. The WIPP is a geological repository intended for the disposal of mixed hazardous and transuranic wastes generated by DOE in the production and decommissioning of nuclear weapons. The hazardous portion of the waste is subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA), as codified at 40 CFR Part 268. DOE's no-migration petition is intended to show that the WIPP will comply with the land disposal restrictions by demonstrating that hazardous constituents will not migrate out of the WIPP disposal unit for as long as the wastes remain hazardous (a regulatory period of up to 10,000 years).

DATES: Public comments on the no-migration petition should be submitted on or before October 18, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–WI2A–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–WI2A–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section.

Copies of the draft petition also are available to the public at RCRA dockets that EPA has opened in New Mexico. These dockets are in the same locations as the currently existing dockets for the EPA Office of Radiation and Indoor Air (ORIA). ORIA is responsible for regulating the radioactive portion of the WIPP waste through 40 CFR Part 191. Petitions are located at: (1) the EPA's docket in the Governmental Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (2) the EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico, at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); and (3) the EPA's docket in the Municipal Library of Carlsbad, New Mexico, at 101 South Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). Up to 100 pages of material from the docket may be copied at no cost. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For information on specific aspects of the petition, and issues discussed in this notice, contact Reid Rosnick (703–308–8758), or Chris Rhyne (703–308–8658), Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 40 CFR 268.6, EPA made a conditional no-migration determination for the WIPP on November 14, 1990 (55*FR*47709). This determination allowed DOE to place hazardous waste subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA) in the WIPP for the limited purposes of below-ground testing and experimentation over a ten year period. In 1993, DOE canceled the proposed test period, after a determination that the tests and experiments could be done faster and more cheaply above ground. As a result, the 1990 determination was made moot, and DOE was informed that a new petition for a long-term demonstration would need to be submitted and approved before any waste could be accepted at the facility. A preliminary draft petition was made available to the public in August of 1995 (see 60 FR 40379 August 8, 1995) as the first step in the Agency's decision process. That draft petition was not complete, in that all of the required information for a long-term demonstration was not contained in the document, and in that it covered only the disposal phase of the project (the first twenty-five years of operation of the facility).

EPA has provided guidance to DOE on the requirements for submitting a complete petition through the Agency's guidance document entitled ''No-Migration Variance to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners,'' and by encouraging pre-submission discussions with DOE. The Agency has also provided comments on DOE's submitted draft petition to provide early guidance to DOE (available in today's docket).

The petition noticed today addresses the short-term and the long-term migration potential of the RCRA hazardous constituents from the WIPP repository. The EPA encourages the public to provide comments that will inform its review of DOE's petition.

It should be noted that the WIPP is also subject to a RCRA permit for both the above and below ground storage, and disposal of RCRA hazardous wastes at the site. DOE submitted its application for a RCRA permit to the State of New Mexico in June of 1995. In addition, the WIPP must demonstrate compliance with the Agency's environmental radiation protection standards (40 CFR part 191). The RCRA no-migration determination will be made in concert with the determination of compliance with the radiation protection standards. Finally, it should be noted that there is currently a bill in the United States Congress that would, among other things, exempt the WIPP from EPA's land disposal restrictions, eliminating the need for a no-migration determination. Since the status of Congressional action is uncertain at this time, EPA intends to review DOE's petition consistent with current law and regulations. If Congress eliminates the RCRA land disposal restrictions at the WIPP, EPA will publish a notice in the Federal Register announcing that it is ceasing review of DOE's petition.

EPA will review DOE's full petition and determine, through a notice and comment process, whether to issue a no-migration determination, or deny the no-migration petition, consistent with the procedures laid out in 40 CFR 260.20 and 268.6. Interested members of the public now have an opportunity to comment on DOE's petition. After EPA has completed a preliminary review, it will publish a proposed decision for public comment in the Federal Register. EPA's final decision will also be published in the Federal Register.

Dated: August 9, 1996.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 96–21082 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL 5553–6]

Community-Based Environmental Protection Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a two-day meeting of the Community-Based Environmental Protection Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the Community-Based Environmental Protection Committee was formed to identify opportunities for harmonizing environmental policy, economic activity, and ecosystem management.

The meeting is being held to discuss recommendations the Committee plans to submit to EPA. Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on Tuesday, September 10, and Wednesday, September 11, 1996, at the Mayflower Park Hotel, 405 Olive Way, Seattle, Washington. On Tuesday, September 10, the Committee will meet from 9:00 a.m. to 5:00 p.m., and on Wednesday, September 11, the Committee will meet from 8:30 a.m. to 4:00 p.m.

ADDRESSES: Written comments should be sent to: Mark Joyce or Deborah Ross, Office of Cooperative Environmental Management, U.S. EPA (1601F), 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce or Deborah Ross, Designated Federal Officials, Direct line (202) 260–6889 or (202) 260–9752, Secretary's line (202) 260–9744.

Dated: August 7, 1996.

Mark Joyce and Deborah Ross,

Designated Federal Officials.

[FR Doc. 96–21076 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00447; FRL–5392–2]

Worker Protection Standard; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is holding a series of public meetings to solicit information from workers, growers, and others regarding regulations designed to protect agricultural workers and pesticide handlers. The first meeting was held in Winter Haven, Florida on February 22, 1996. The meetings are a part of EPA's commitment to monitor and evaluate the impact and performance of the Worker Protection regulations. The public meetings are designed to provide an opportunity for those directly affected by the regulations to relay their experiences after the regulations' first full year of implementation. By reaching out to those on the frontlines and for whom these regulations are intended to provide public health protection, EPA will better understand how the program is working and where meaningful improvements should be made. The meetings are open to the public.

DATES: The next scheduled meeting will be held on August 21, 1996. Registration begins at 5 p.m., and the public meeting begins at 7 p.m.

ADDRESSES: The meeting will be held at the Tipton County Fair Grounds, 1200 South Main St., Tipton, Indiana.

FOR FURTHER INFORMATION CONTACT: By mail: Jeanne Heying (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (703) 305-7164, Fax: (703) 308-2962, e-mail: heying.jeanne@epamail.epa.gov. To verify the schedule for the meeting contact: Don Baumgartner, (312) 886-7835.

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, EPA issued final regulations governing the protection of employees on farms, forests and nurseries, and greenhouses from occupational exposures to agricultural pesticides. The WPS covers both workers in areas treated with pesticides, and employees who handle (mix, load, apply, etc.) pesticides. More specifically, the provisions of the Standard are intended to:

Inform employees about the hazards of pesticides:

-By requiring provisions for basic safety training, posting and distribution of information about the pesticides.

Eliminate exposure to pesticides:

-By prohibiting against the application of pesticides in a way that would cause exposure to people.

-By requiring time-limited restrictions for workers to return to areas following the application of pesticides.

-By requiring provisions for workers and handlers to wear proper protective clothing/equipment.

Mitigate exposures that occur:

-By requiring arrangements for the supply of soap, water, and towels in the case of pesticide exposure.

-By requiring provisions for emergency assistance.

II. Information Sought by EPA

EPA believes that agricultural workers, handlers, and growers are best able to provide unique insights on the effects of the WPS requirements. Their input will be supplemented by data generated from other sources during the course of EPA's longer-term evaluation effort. As a follow-up to the public meetings, EPA will develop a summary of information gained. These tools will be used to develop strategies for improving the administration of the WPS. The Agency is specifically interested in hearing public comment, or receiving written comment, on the following topics.

1. Assistance from regulatory partners and others involved with the WPS.
2. Usefulness of available assistance.
3. Understanding the WPS requirements.
4. Success in implementing the requirements.
5. Difficulties in implementing the requirements.
6. Suggestions to improve implementation.

III. Registration to Make Comments

Persons who wish to speak at the public meeting are encouraged to register at the meeting location. The Agency encourages parties to submit data to substantiate comments whenever possible. All comments, as well as information gathered at the public meetings will be available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday (except legal holidays) at the Public Response and Program Resource Branch, Field Operations Division, Room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as part of any comment may be claimed as confidential by marking any or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with the 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 the Agency without prior notice to the

submitter. The Agency anticipates that most of the comments will not be classified as CBI, and prefers that all information submitted be publicly available. Any records or transcripts of the open meetings will be considered public information and cannot be declared CBI.

IV. Structure of the Meeting

EPA will open the meeting with brief introductory comments. EPA will then invite those parties who have registered to present their comments. EPA anticipates that each speaker will be permitted 5 minutes to make comments. After each speaker, Agency and state representatives may ask the presenter questions of clarification. The Agency reserves the right to adjust the time for presenters depending on the number of speakers.

Members of the public are encouraged to submit written documentation to EPA at the meeting to ensure that their entire position goes on record in the event that time does not permit a complete oral presentation.

Any information may be delivered to Jeanne Heying at the address stated earlier in this Notice.

List of Subjects

Environmental protection.

Dated: August 14, 1996.

Cathleen Kronopolis,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 96–21169 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5556–2]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that a proposed Prospective Purchaser Agreement associated with the Croydon Superfund Site in Croydon PA, was executed by the purchaser on August 12, 1996 and is subject to final approval by the Agency and United States Department of Justice. The Purchaser Agreement would resolve certain potential EPA claims under Section 107 of CERCLA, 42 U.S.C. 9607, against Slogam Enterprises Limited, a Pennsylvania limited partnership (''the purchaser''). The settlement would require the purchaser to pay a principal payment of $20,000 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before September 18, 1996.

ADDRESSES: The proposed agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the ''Croydon Superfund Site'' and ''EPA Docket No. III–96–80–DC'' and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Heather Gray Torres (3RC21), Associate Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2696.

Dated: August 12, 1996.

Thomas Maslany,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 96–21081 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5557–5]

Draft Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin

AGENCY: Environmental Protection Agency.

ACTION: Notice of the availability of the Draft Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin (the Strategy) and opportunity to comment.

SUMMARY: The Great Lakes Water Quality Agreement of 1978, as amended by Protocol signed November 1987, between the United States and Canada commits the two countries to seek to virtually eliminate the discharge of persistent toxic substances to the Great Lakes ecosystem. Pursuant to this goal, the Strategy establishes a framework by which the United States Environmental Protection Agency, Environment Canada, the Great Lakes States and stakeholders, the Tribes, and national stakeholders whose actions affect or impact the Great Lakes Basin, can pursue virtual elimination of persistent toxic substances, particularly those which bioaccumulate, from the Great Lakes. These actions will help to protect and ensure the long-term health and integrity of the Great Lakes ecosystem.

Virtual elimination of persistent toxic substances will be pursued through a variety of voluntary, regulatory, and incentive-based actions aimed at reducing specific pollutants over specific timeframes. The primary approach will be to achieve reductions through pollution prevention or other voluntary means.

The geographic scope of the strategy will be focused primarily on the Great Lakes Basin; however, a larger geographic scale will be used to address atmospheric deposition. The strategy will serve as a vehicle to pursue discussions with jurisdictions having out-of-basin sources that may be adversely impacting Great Lakes water quality.

Extensive efforts have been made to inform stakeholders and the public of the Strategy, its objectives, and the process established for public involvement. These efforts have included holding public meetings, issuing progress reports, and making information available via the Internet. A number of stakeholder meetings (9/93, 9/94, and 8/95) were held in connection with the Virtual Elimination Pilot Project and Strategy development.

During the development of the Strategy, various Great Lakes stakeholders, governmental organizations, and the public have had an opportunity to provide preliminary comments. This notice now invites a wider spectrum of comments from the public, governmental organizations, stakeholders, and other interested parties. To provide this additional opportunity for input, all interested commenters will have 30 days to submit comments on the draft Strategy.

DATES: The draft Strategy will be made available to the public beginning August 19, 1996. Comments must be submitted no later than September 18, 1996.

ADDRESSES: Availability of Document and Submission of Comments: Copies of the document may be obtained by calling the Great Lakes National Program Office at (312) 353–2117 or (312) 353–9299. The document will also be available at the U.S. EPA Region 5 Library at the address and phone number listed below, or through the Great Lakes National Program Office home page at http://www.epa.gov/glnpo/. Comments may be submitted in writing to Elizabeth LaPlante of the Great Lakes National Program Office (address listed below) or electronically to the following Internet address: siebers.deborah@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Additional information on the Strategy may be obtained by contacting Elizabeth LaPlante at the following address and phone number:

EPA Great Lakes National Program Office, 77 West Jackson Boulevard, G–9J, Chicago, Illinois, 60604; Telephone (312) 353–2694; FAX (312) 353–2018.

Copies of the document may be obtained by contacting the following:

EPA Region 5 Library, 12th Floor, 77 West Jackson Boulevard, Chicago, Illinois, 60604; Telephone (312) 353–2022; FAX (312) 353–2001. Library Hours: 7:30 a.m.–5 p.m.

Dated: August 13, 1996.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Dated: August 15, 1996.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 96–21170 Filed 8–16–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:22 a.m. on Tuesday, August 13, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) Reports of the Office of Inspector General, and (2) matters relating to the probable failure of a certain insured depository institution.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: August 13, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–21186 Filed 8–15–96; 2:08 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 96–20980.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 22, 1996, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Final Audit Report on the Democratic State Central Committee of California—Federal.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA: Advisory Opinion 1996–25: Stanley M. Brand on behalf of Seafarers Political Activity Donation (''SPAD'').

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 96–21146 Filed 8–15–96; 10:24 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 9, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Employee Stock Ownership Plan of Franklin National Bankshares, Inc., Mt. Vernon, Texas; to retain 12.5 percent of the voting shares of Franklin National Bankshares, Inc., Mt. Vernon, Texas, and thereby indirectly acquire Franklin National Bank, Mt. Vernon, Texas.

2. Lee Dietrich Mueller, Jr., La Grange, Texas; to acquire an additional 1.29 percent, for a total of 10.28 percent of the voting shares of Premier Bancshares, Inc., La Grange, Texas, and thereby indirectly acquire La Grange State Bank, La Grange, Texas.

Board of Governors of the Federal Reserve System, August 13, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–21011 Filed 8-16-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 12, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Citizens Financial Group, Inc., Providence, Rhode Island; The Governor and Company of the Bank of Ireland, Dublin, Ireland; The Royal Bank of Scotland Group plc; Edinburgh, Scotland; and The Royal Bank of Scotland plc, Edinburgh, Scotland; to acquire 100 percent of the voting shares of Farmers & Mechanics Bank, Middletown, Connecticut.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Destin Bancshares, Inc., Destin, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Destin Bank, Destin, Florida.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Commerce Bancshares, Inc., Bloomington, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Geneva State Bank, Geneva, Minnesota.

Board of Governors of the Federal Reserve System, August 13, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–21012 Filed 8-16-96; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 952–3231]

Grey Advertising, Inc; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New York City-based advertising agency from misrepresenting the fat, saturated fat, cholesterol, or calories in any frozen yogurt, frozen sorbet, and most ice cream products. The consent agreement settles allegations stemming from Grey's role in a commercial for The Dannon Company's ''Pure Indulgence'' frozen yogurt. The Commission had alleged that the commercial falsely implied that some of the flavors in the Pure Indulgence line were low in fat and calories and were lower in fat than ice cream.

DATES: Comments must be received on or before October 18, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S–4302, Washington, DC 20850. (202) 326–3042.

Justin Dingfelder, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S–4302, Washington, DC 20850. (202) 326–3017.

Rosemary Rosso, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S–4002, Washington, DC 20850. (202) 326–2174.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the pubic record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Grey Advertising, Inc., a corporation (''proposed respondent''), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Grey Advertising, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Grey Advertising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office or place of business at 777 Third Avenue, New York, New York 10017.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute

an admission by proposed respondent that the law has been violated as alleged in the draft complaint or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That respondent Grey Advertising, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any frozen yogurt, frozen sorbet or ice cream product (excluding all other food or confection products in which ice cream is an ingredient comprising less than fifty percent of the total weight of the involved product) in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol, or calories in any such product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any frozen yogurt, frozen sorbet or ice cream by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising under this Order.

IV

It is further ordered that respondent shall, within thirty (30) days after service of this Order, distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements or other materials covered by this Order.

V

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon in disseminating such representation; and

2. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

VI

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less then twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Grey Advertising, Inc. (''Grey'') concerning advertising claims made by Grey for Dannon Pure Indulgence frozen yogurts. In a related matter, the Commission has also accepted, subject to final approval, and separately placed on the public record, an agreement to a proposed consent order from Grey involving Grey's role is creating advertising for Hasbro, Inc.'s Colorblaster Design Toy.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the complaint, advertising created by Grey for Dannon Pure Indulgence frozen yogurt falsely represented that the frozen yogurt was low in fat, low in calories, and lower in fat than ice cream when certain flavors of the yogurt were not. The complaint further alleges that Grey knew or should have known that these claims were false and misleading. A separate consent order with The Dannon Company, Inc. resolving allegations about the same advertisement was issued by the Commission on March 18, 1996. Docket No. C–3643.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Grey from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits Grey from misrepresenting the existence or amount of fat, saturated fat, cholesterol or calories in any frozen yogurt, frozen sorbet or ice cream product (excluding all other food or confection products in which ice cream is an ingredient comprising less than fifty percent of the total weight of the involved product). Part I also requires that any representation covered by that Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration (''FDA'') must comply with the qualifying amount set forth in that regulation.

Part II of the proposed order provides that representations that would be specifically permitted in food labeling, under regulations issued by the FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

The proposed order also requires Grey to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to its operating divisions and certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing in federal court, by either the United States or the FTC, of a complaint against Grey alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 96–21029 Filed 8–16–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3231]

Grey Advertising, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New York City-based advertising agency from using deceptive demonstrations or otherwise misrepresenting the performance of a toy. The consent agreement settles allegations stemming from Grey's role in a commercial for Hasbro, Inc.'s ''Colorblaster'' paint sprayer toy. The Commission had alleged that the commercial represented that children can operate the toy with very little effort when, in fact, Hasbro used a motorized air compressor during filming to provide the pressure necessary to operate the toy with ease and to achieve the results shown in the commercial.

DATES: Comments must be received on or before October 18, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S–4302, Washington, DC 20850. (202) 326–3042.

Justin Dingfelder, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S–4302, Washington, DC 20850. (202) 326–3017.

Rosemary Rosso, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S–4002, Washington, DC 20850. (202) 326–2174.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Grey Advertising, Inc., a corporation (''proposed respondent''), and it now appears that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Grey Advertising, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Grey Advertising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office or place of business at 777 Third Avenue, New York, New York 10017.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps:

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its

complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is Ordered That respondent Grey Advertising, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any toy in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. In connection with any advertisement depicting a demonstration, experiment or test, making any representation, directly or by implication, that the demonstration, experiment, or test depicted in the advertisement proves, demonstrates, or confirms any material quality, feature, or merit of any toy when such demonstration, experiment, or test does not prove, demonstrate, or confirm the representation for any reason, including but not limited to:

1. the undisclosed use or substitution of a material mock-up or prop;

2. the undisclosed material alteration in a material characteristic of the advertised toy or any other material prop or device depicted in the advertisement; or

3. the undisclosed use of a visual perspective or camera, film, audio, or video technique;

that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised toy or any other material aspect of the demonstration or depiction.

Provided, however, That notwithstanding the foregoing, nothing in this order shall be deemed to otherwise preclude the use of fantasy segments or prototypes which use otherwise is not deceptive.

Provided further, however, That it shall be a defense hereunder that respondent neither knew nor had reason to know that the demonstration, experiment or test did not prove, demonstrate or confirm the representation.

B. Misrepresenting, in any manner, directly or by implication, any performance characteristics of any Colorblaster Design Toy or any other toy.

II

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising under this Order.

III

It is further ordered that respondent shall, within thirty (30) days after service of this Order, distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements or other materials covered by this Order.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon in disseminating such representation;

2. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations; and

3. Any and all affidavits or certificates submitted by an employee, agent, or representative of respondent to a television network or to any other individual or entity, other than counsel for respondent, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in a toy advertisement.

V

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or

ruling and the date such dismissal or ruling is upheld on appeal.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order Grey Advertising, Inc. (''Grey'') in connection with its advertising of the Colorblaster Design Toy (the ''Colorblaster''), manufactured by Hasbro, Inc. In a related matter, the Commission has also accepted, subject to final approval, and separately placed on the public record, an agreement to a proposed consent order from Grey involving claims made in advertising created by Grey for Dannon Pure Indulgence frozen yogurts.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the complaint, the Colorblaster is a spray painting toy consisting of a plastic drawing tray with an oblong plastic air tank underneath. An attached handle is used to pump up pressure inside the air tank. Special color pens are inserted into a sprayer connected to a hose attached to the air tank. The enclosed instructions state: ''Fully extend handle and pump it quickly 50 strokes * * * The more you pump, the more you spray.''

The complaint alleges that television advertisements for the Colorblaster represented that the demonstrations of the toy were unaltered and the results shown accurately represent the performance of actual, unaltered toys under the depicted conditions. This representation is alleged to be false and misleading. According to the complaint, the Colorblaster depicted in the advertisements was not manually pumped to provide the air pressure necessary to operate the paint sprayer. Instead, a motorized air compressor was attached to the toy to provide the air pressure necessary to operate the paint sprayer, making it appear that children can operate the toy and complete multi-part stencils with a small amount of pumping and little effort.

The complaint also alleges that the advertisements for the Colorblaster misrepresented that children can operate the toy and complete multi-part stencils with a small amount of pumping and little effort.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Grey from engaging in similar acts and practices in the future.

Part I.A. of the proposed order prohibits Grey from misrepresenting that a demonstration, experiment, or test depicted in an advertisement proves, demonstrates, or confirms any material quality, feature, or merit of any toy when it does not do so. Part I.A. enumerates examples of such misrepresentations, including:

1. The undisclosed use or substitution of a material mock-up or prop;

2. the undisclosed material alteration in a material characteristic of the advertised toy or any other material prop or device depicted in the advertisement; or

3. the undisclosed use of a visual perspective or camera, film, audio, or video technique;

that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised toy or any other material aspect of the demonstration or depiction.

Part I.A. does not preclude the use of fantasy segments or prototypes which use is otherwise not deceptive. Part I.A. provides Grey with a defense liability if it neither knew nor had reason to know that a demonstration, experiment or test did not prove, demonstrate or confirm a representation.

Part I.B prohibits Grey from misrepresenting any performance characteristic of the Colorblaster Design Toy or any other toy.

The proposed order also requires Grey to maintain certain materials relating to advertisements covered by the order, to distribute copies of the order to its operating divisions and certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing in federal court, by either the United States or the FTC, of a complaint against Grey alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 96–21030 Filed 8–16–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Release of Draft Findings of the Fernald Dosimetry Reconstruction Project: Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Release of Draft Findings of the Fernald Dosimetry Reconstruction Project.

Times and Date:

4:30 p.m.—5:30 p.m., August 22, 1996.

7:30 p.m.—8:30 p.m., August 22, 1996.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367–5610.

Status: Open to the public for observation, limited only by the space available. The meeting room accommodates approximately 300 people.

Matters to be Discussed

The Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH), and its contractor, the Radiological Assessments Corporation, will release the draft findings of the Fernald Dosimetry Reconstruction Project. The draft final report provides dose and risk estimates for radiation releases in the area surrounding the Department of Energy's Fernald uranium production facility (formerly the Feed Materials Production Center [FMPC]) during operations from 1951–1988. This meeting will be held in two sessions as indicated.

Agenda items may change as priorities dictate.

Contact Person for More Information

Steven A. Adams, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, Mailstop F–35, Atlanta, Georgia 30341–3724, telephone 770/448–7040, FAX 770/488–7044.

Dated: August 13, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–21035 Filed 8–16–96; 8:45 am]

BILLING CODE 4163–18–M

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates:

9 a.m.–4:45 p.m., September 4, 1996.

9 a.m.–5 p.m., September 5, 1996.

Place: Sheraton Springdale Hotel, 11911 Sheraton Lane, Springdale, Ohio 45246, telephone 513/671–6600, FAX 513/671–0507.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose

This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. The purpose of this meeting is to provide a forum for community, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed

Agenda items include: presentations from the National Center for Environmental Health (NCEH) on current activities; and from the National Institute for Occupational Safety and Health and ATSDR on the progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information

Steven A. Adams, or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: August 13, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–21036 Filed 8–16–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96D–0267]

Compliance Policy Guides; Revocation and Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of three compliance policy guides (CPG's) because they are outdated and have been superseded by the more comprehensive seafood nomenclature guidance contained in FDA's ''Seafood List.'' To reflect its reliance on the ''Seafood List,'' FDA also is announcing the availability of a new CPG. These actions are being taken to ensure that FDA's CPG's accurately reflect current agency views on compliance policy.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of CPG Sec. 540.750 ''Common or Usual Names for Seafood In Interstate Commerce'' (CPG 7108.26) to the Director, Division of Enforcement Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send a self-addressed adhesive label to assist that office in processing your requests. Submit written comments on CPG 7108.26 to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of CPG Sec. 540.100 ''Capelin; Prohibited From Being Labeled as Smelt'' (CPG 7108.22), CPG Sec. 540.300 ''Crabmeat—Product Name'' (CPG 7108.04), and CPG Sec. 540.350 ''Common or Usual Names for Crustaceans'' (CPG 7108.23) and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Spring C. Randolph, Center for Food Safety and Applied Nutrition (HFS–416), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

SUPPLEMENTARY INFORMATION: FDA is revoking three of its CPG's that address the labeling of seafood because they have been superseded by more comprehensive guidance provided by the ''Seafood List.'' The following three compliance policy guides are being revoked: (1) CPG Sec. 540.100 ''Capelin; Prohibited From Being Labeled as Smelt'' (CPG 7108.22); (2) CPG Sec. 540.300 ''Crabmeat—Product Name'' (CPG 7108.04); and (3) CPG Sec. 540.350 ''Common or Usual Names for Crustaceans'' (CPG 7108.23). The above CPG's are superseded by FDA's ''Seafood List.'' The ''Seafood List'' includes more accurate and comprehensive guidance than that contained in these CPG's.

Developed in recognition of the need for a single source of recommended market names for an expanding variety of seafood, the ''Seafood List'' is a revision of the ''FDA Guide to Acceptable Market Names for Food Fish Sold in Interstate Commerce'' (sometimes referred to as the ''Fish

List''). FDA developed the ''Fish List'' jointly with the National Marine Fisheries Service, U.S. Department of Commerce, to provide a source of names that would facilitate uniform species identification and labeling within the industry and would reduce confusion among consumers. The ''Seafood List'' revises and expands the list of names to include invertebrate seafood species (mollusks and crustaceans). FDA announced the availability of, and solicited comments on, the ''Seafood List'' in the Federal Register of September 14, 1994 (59 FR 47144). The ''Seafood List'' represents an extensive, although not complete, listing of seafood commonly sold in the United States.

FDA also is announcing the availability of CPG Sec. 540.750 ''Common or Usual Names for Seafood in Interstate Commerce,'' which announces FDA's intent to use the ''Seafood List'' as guidance for the selection of suitable common or usual names of a wide range of seafood products. FDA considers the ''Seafood List'' to represent the type of statement of agency policy that normally appears in the Compliance Policy Guides Manual.

Therefore, CPG's Sec. 540.100, Sec. 540.300, and Sec. 540.350 are obsolete and are hereby revoked. In their place, FDA is issuing CPG Sec. 540.750 to reflect how the agency intends to use the ''Seafood List.''

Interested persons may, at any time, submit written comments on CPG Sec. 540.750 or any of its CPG's to the Dockets Management Branch (address above). Comments should be identified with the docket number found in brackets in the heading of this document. The agency accepts comments but is not compelled to respond to each comment. All comments will be included in the docket and will be available for public review.

Although CPG Sec. 540.750 does not create or confer any rights for, or on, any person and does not operate to bind FDA or the public, it does represent the agency's current thinking on the most appropriate common or usual names for seafood. FDA is making it available to ensure that both the public and agency employees are fully aware of that thinking.

Dated: August 12, 1996.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 96–21048 Filed 8–16–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement and Review Criteria for a Cooperative Agreement To Support Innovative Projects Relating to Public Health Education and Services

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for a Cooperative Agreement for fiscal year 1996 with a professional association located in the Washington, D.C. area with an established relationship with the accredited schools of public health. Such an association should be recognized as a National representative of schools of public health; have proprietary information concerning student enrollment, graduates, faculty and curricula in schools of public health; and have access to the leadership in schools of public health. The purpose of the Cooperative Agreement is to support a program of innovative projects which would demonstrate the sharing of expertise between public health faculty and public health practitioners in States and communities, to both improve public health and health care services at the State and community level and provide meaningful feedback to schools of public health concerning the efficacy of their curricula in educating and training the public health workforce. This Cooperative Agreement is solicited under the authority of Title III, section 301, of the Public Health Service Act, as amended. Section 301 authorizes the award of grants, contracts, and cooperative agreements to public and non-profit entities for several purposes, including the demonstration of innovative models.

Up to $750,000 may be available to fund one Cooperative Agreement in fiscal year 1996 and up to $1,000,000 for each of the succeeding four years. The Cooperative Agreement will be awarded for a project period of up to five years, funded each fiscal year depending on performance and the availability of appropriate funds.

Background

As part of its overall mission, HRSA is responsible for providing national leadership to assure that high quality health care and services are provided to the most vulnerable populations in the Nation and to improve the basic and continuing education of public health professionals to assess, develop and assure that a high level of health care services are available to these populations. In carrying out this responsibility for the education of public health professionals, HRSA works collaboratively with educational institutions—especially schools of public health—and with professional organizations to develop and implement improved basic and continuing education curricula to assure competent public health practice and leadership in the United States.

At the present time there are 27 accredited schools of public health in the United States. These schools represent the primary educational system that trains personnel needed to operate the Nation's local, State and Federal public health agencies. They address issues of disease prevention and health promotion, emphasize teaching and research focused on epidemiology; biostatistics; occupational and environmental health; health services administration, including health policy development, health services delivery, etc.; and the behavioral sciences, including health education, nutrition, maternal and child health, health promotion, etc.

It has been recognized that the quality of public health personnel plays a critical role in the promotion of health, prevention and control of disease, and the management of health resources. The schools of public health's principal purpose is to promote and improve the education and training of professional public health personnel.

An area of major concern to HRSA is the lack of individuals trained and prepared to manage and/or provide services in community settings. It is these settings where a majority of HRSA funding and attention is directed, because it is at the community-level that our most vulnerable populations need care. The disconnect between public health training and community settings where these individuals are needed continues to be a significant problem in public health and for the efficient delivery of HRSA-sponsored care and services.

A second major concern is the proliferation of managed care programs and their impact on HRSA-sponsored organizations. There is a clear gap between the thrust of managed care (both its services orientation and funding policies) and the traditional provision of care and services by HRSA grantees. This gap is exacerbated by the lack of trained individuals who understand managed care and are capable of using this understanding in the HRSA grantee community.

HRSA also is concerned over the low number of faculty, students and practitioners from minority backgrounds in academic and practice settings. The

Schools of Public Health can play a crucial role in alleviating these shortcomings, especially in training minority and disadvantaged public health workers. HRSA is proposing to develop a range of activities utilizing the strengths of the schools of public health to alleviate the identified as well as emerging concerns. This cooperative agreement could serve as an incentive to the academic public health community to become more involved in public health practice issues and increase the number of minority professionals working in public health settings, and introduce cultural diversity training into the curriculum in schools of public health.

Purpose

There are three purposes for this cooperative agreement: (1) To provide assistance in curricula development and related initiatives that will help deal with the need for better educated and culturally sensitive entry-level and mid-level public health practitioners in public health practice settings; (2) to strengthen and institutionalize practice oriented linkages between the Schools of Public Health and the public health practice community so that individuals are better trained to meet the needs of HRSA-sponsored grantees in community settings; and (3) to develop curricula and other training mechanisms to help deal with the shortfall in individuals with an understanding of managed care who can apply this understanding to the HRSA grantee community.

The Washington, D.C. area is specified as the location of the Cooperative Agreement recipient because of the Federal interests requiring substantive involvement of Federal officials in developing the training and technical assistance program, proximity to Federal expertise, and scarce Federal resources for travel. The project would be expected to initiate such activities as:

1. Establish a Steering Committee for the development and pilot testing of activities to provide technical assistance to public health practice sites. For example, utilizing the combined technical expertise of HRSA and schools of public health to evaluate health promotion and disease prevention programs at community health centers and maternal and child health clinics within health departments.

2. Analysis of pedagogical methods to accomplish educational objectives for adult learners. For example, what curricula and distribution mechanisms could be developed to provide distance learning for nurses in county health departments or migrant health centers.

3. Improvement of outcome measures for HRSA public health programs, e.g: outcomes measures for the delivery of health services, patient health status, and patient satisfaction.

4. Establishment of linkages with public health practice organizations, e.g.: working with managed care organizations and local health departments to provide quality school health services, or coordinating a health improvement project involving foundation funding, local health departments and community-based providers.

5. Development of curricula by working with health care delivery projects funded by HRSA, e.g.: HIV/AIDS, organ transplantation, health care for the homeless, migrant health care, maternal and child health, to create an academic public health practice linkage to promote disease prevention and health promotion concepts.

6. Improvement of public health research on community populations to highlight both public health education and the efficient delivery of health services. For example, develop demonstration projects which include a population-based analysis of community preventive health care needs and the development of demonstration programs to address identified needs.

7. Development of an internship program for students in schools of public health to learn about the federal public health system. For example, developing an internship and mentoring program for masters of public health and masters of health sciences students during their academic preparation.

Federal Involvement

The Cooperative Agreement mechanism is being used for this project to allow for substantive Federal programmatic involvement in the development of the details of the Cooperative Agreement.

Substantive Federal programmatic involvement will occur through Federal membership on the Steering Committee representing the Health Resources and Services Administration, including the Bureau of Health Professions, Bureau of Health Resources Development, Bureau of Primary Health Care, Maternal and Child Health Bureau, and the Office of Public Health Practice. The involvement primarily would be in the following areas:

- Participation in the identification of emerging health management practice issues for technical assistance purposes;
- Identification of HRSA programmatic issues for special attention through the Cooperative Agreement;
- Identification of appropriate consultation for the proposed projects;
- Assistance in defining the objective, method, evaluation and use of project results and translation into the knowledge, skills, and attributes for educational objectives;
- Assistance in ensuring appropriate linkages with public health practice and health care delivery sites;
- Assistance in creating linkages to appropriate professional associations in the Washington, D.C. area;
- Participation in the review and selection of contracts and agreements developed in implementing the project; (and)
- Participation in monitoring the implementation, conduct and results of projects implemented under the Cooperative Agreement.

Eligibility for Funding

Entities eligible for funding under this Cooperative Agreement must:

1. be a recognized professional association representing schools of public health, and

2. be located in the Washington, D.C. metropolitan area.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of *Healthy People 2000.* Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace; to promote the non-use of all tobacco products; and to promote Public Law 103–227, the Pro-Children Act of 1994, which prohibits smoking in certain facilities that receive Federal funds in which education, library, day care,

health care, and early childhood development services are provided to children.

Review Criteria

Applications received will be reviewed by an *ad hoc* review panel using the following criteria:

- The degree to which the proposal contains clearly stated, realistic, cross-cutting, achievable, and measurable objectives;
- The extent to which the proposal includes an integrated methodology compatible with the scope of project objectives, including collaborative relationships with relevant institutions and professional associations;
- The administrative and management capability of the applicant to carry out the Cooperative Agreement; and
- The extent to which budget justifications are complete, appropriate, and cost-effective.

Application Requests

Eligible entities interested in receiving materials regarding this program should notify HRSA. Materials will be sent only to those entities making a request. Requests for proposal instructions and other questions should be directed to: Mr. John R. Westcott, Grants Management Officer, Bureau of Health Professions, HRSA, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6880.

Completed applications must be returned to the Grants Management Officer at the above address.

Questions concerning programmatic aspects of the Cooperative Agreement must be directed to:

Ronald B. Merrill, M.H.A., Chief, Public Health Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, 5600 Fishers Lane, Room 8C–09, Rockville, Maryland 20857, Telephone: (301) 443–6896

Alexander F. Ross, Sc.D., Office of Public Health Practice/HRSA, Parklawn Building, Room 14–15, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4034

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of application is September 3, 1996. Applications will be considered to be ''on time'' if they are either:

1. *Received on or before* the established deadline date, or

2. *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, applications which exceed the page limitation and/or do not follow format instructions will not be accepted for processing and will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is also not subject to the Public Health System Reporting Requirements.

Dated: August 13, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–21057 Filed 8–16–96; 8:45 am]

BILLING CODE 4160–15–M

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following teleconference meetings of the SAMHSA Special Emphasis Panel II in August 1996.

A summary of the meetings may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–4783.

Substantive program information may be obtained from the individual named as Contact for each meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Dates: August 20, 1996.

Place: Room 17–74—Telephone Conference, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852.

Closed: August 20, 1996—12:00 Noon–2:00 p.m.

Panel: FEMA—Regular Services Grant—Alaska.

Contact: Stanley Kusnetz, Room 17–89, Parklawn Building, Rockville, Maryland 20852 Telephone: (301) 443–9918 and FAX: (301) 443–3437.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: August 20, 1996.

Place: Room 17–74—Telephone Conference, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852.

Closed: August 20, 1996—2:30 p.m.–5:00 p.m.

Panel: FEMA—Regular Services Counseling Program for Victims of May 28, 1996 Tornado.

Contact: Katie Baas, Room 17–89, Parklawn Building, Telephone: (301) 443–2592 and FAX: (301) 443–3437.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 30, 1996.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 96–21051 Filed 8–16–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–014–06–1430–01; IDI–31387]

Plan Amendment To Allow for an Indemnity School Land Selection To Transfer Public Lands in Valley County, ID to the State of Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability/notice of realty action.

SUMMARY: Notice is hereby given that the BLM has completed a proposal to amend the Cascade RMP to classify and to allow for transfer certain public lands to the State of Idaho via Indemnity School Selection in Valley County.

DATES: Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 ''C'' Street, NW., Washington, DC 20240, within 30 days of publication of this notice. For a period of 45 days from the publication of this notice, interested

parties may submit comments regarding the indemnity selection and disposal of the selected public lands to the District Manager, Bureau of Land Management, 3948 Development Ave., Boise, ID 83705. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any planning protests or objections regarding the indemnity selection, the planning amendment will be in effect and this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following described lands have been examined and through the public supported land use planning process have been determined to be suitable and are hereby classified for disposal via the indemnity selection by the State of Idaho pursuant to Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852). The land will not be transferred until at least 60 days after the date of publication of this notice in the Federal Register.

Boise Meridian, Idaho

T. 17 N., R. 4 E.,
Section 21; S½NW¼,
Section 22; N½SE¼NE¼, E½SE¼.
T. 18 N., R. 4 E.,
Section 17; SE¼NE¼,
Section 19; E½E½.

The following described lands have been examined and through the public supported land use planning process have been determined to not be suitable for disposal via the indemnity selection by the State of Idaho pursuant to Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852).

Boise Meridian, Idaho

T. 17 N., R. 4 E.,
Section 21; S½SE¼,
Section 33; E½SW¼, W½SE¼;
Section 35; NE¼SE¼, W½SE¼, SW¼.

This Decision is in accordance with the Endangered Species Act of 1973 (Pub. L. 93–205, 87 Stat. 884, 16 U.S.C. 1531), E.O. No. 11593, National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 *et seq.*), as amended, National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852; 42 U.S.C. 4321), Federal Land Policy and Management Act of October 21, 1976 (Pub. L. 94–579, 90 Stat. 2743 Section 102(8)), and Section 7 of the Taylor Grazing Act, (43 U.S.C. 315, 315a–315r). This Classification action meets the criteria in, and is made pursuant to 43 CFR 2410.1(a)–(d), and 2450. The purpose of this indemnity selection is to satisfy a portion of the debt owed to the State of Idaho by the federal government for school endowment lands not available for transfer to the State at the time of statehood. The reservations, terms, and conditions applicable to the conveyance are:

Excepting and Reserving to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

2. Those rights for an access road granted to the United States Forest Service, its successors or assigns by Right-of-Way IDI–05762, under the Act of January 13, 1916 (44 LD 513).

Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 ''C'' Street, NW., Washington, DC 20240, within 30 days of publication of this notice.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management. Lower Snake River District, Boise Field Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: John Fend, Cascade Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, (208) 384–3352 or 384–3300.

Dated: August 12, 1996.

Rodger E. Schmitt,

Acting District Manager.

[FR Doc. 96–21037 Filed 8–16–96; 8:45 am]

BILLING CODE 4310–GG–M

[OR–958–0777–63; GP6–0228; OR–52098]

Rejection of Application for the Conveyance of Federally-Owned Mineral Interests; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public that an application filed to convey Federally-owned minerals to the private surface estate owners has been rejected. The application was published in the Federal Register on August 7, 1995 (60 FR 40193). This action terminates the mineral segregation.

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela J. Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6170.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the application filed for acquisition of the mineral estate by the surface estate owners, Harold Nippert and Patricia Nippert of Sandy, Oregon, has been rejected. The application did not meet the requirements of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)). The lands are described as follows:

Willamette Meridian

T. 20 S., R. 16 E.,
Sec. 26, SW¼;
Sec. 30, lots 3 and 4, E½SW¼, and SE¼;
Sec. 35, NE¼NE¼, W½NE¼, and NE¼NW¼.
T. 21 S., R. 16 E.,
Sec. 1, lots 1–4, inclusive, and N½SE¼, and NE¼SW¼;
Sec. 2, lot 1.
T. 21 S., R. 17 E.,
Sec. 6, lots 4 and 5.

The areas described aggregate 955.81 acres in Deschutes County.

At 8:30 a.m., on September 16, 1996, the lands described above will be open to appropriation under the public land laws, including the mining laws.

Dated: July 31, 1996.

Sherrie L. Reid,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 96–20989 Filed 8–16–96; 8:45 am]

BILLING CODE 4310–33–P

Bureau of Reclamation

[DES 96–35]

Interim South Delta Program, Central Valley, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability on the draft environmental impact report/draft environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) as lead agencies, have prepared a joint draft environmental impact report/draft environmental impact statement (DEIR/DEIS) for the Interim South Delta Program (ISDP). The proposed alternatives provide a means of action to (1) improve water levels and circulation in south Delta channels for local agricultural diversions; and (2) improve south Delta hydraulic conditions to increase diversion into Clifton Court Forebay to optimize the frequency of full pumping

capacity at Banks Pumping Plant. The proposed alternatives exercise the provisions of several Federal laws as applicable to Reclamation. The DEIR/DEIS also examines the relationship of the ISDP to the CALFED Bay-Delta Program. Public hearings will be held in two sessions to receive written or verbal comments on the DEIR/DEIS from interested organizations and individuals on the environmental impacts of the proposal. Notice of the hearings will appear at a future date.

DATES: The public review period commences with the publication of this notice. Written comments on the DEIR/DEIS are to be submitted to the Project Manager, California Department of Water Resources, by December 6, 1996. Public workshops and hearings on the DEIR/DEIS will be held during the month of October in Sacramento and Tracy, California.

ADDRESSES: Requests for copies of the DEIR/DEIS should be sent to Ms. Judy Fong, Department of Water Resources, 1416 Ninth Street, Room 215–28, Sacramento, CA 95814; Telephone: (916) 653–3496; Fax: (916) 653–6077. Written comments on the DEIR/DEIS should be addressed to Mr. Stephen Roberts, Department of Water Resources, 1416 Ninth Street, Room 215–20A, Sacramento, CA 95814; Telephone: (916) 653–2118.

Copies of the DEIR/DEIS are also available for public inspection and review at the following locations:

- Bureau of Reclamation, Regional Director, Attn: MP–152, 2800 Cottage Way, Sacramento, CA 95825–1898; Telephone: (916) 979–2482.
- Bureau of Reclamation, Central California Area Office, Attn: CC–102, 7794 Folsom Dam Road, Folsom CA 95630; Telephone: (916) 989–7255.
- California Department of Water Resources, 1416 Ninth Street, Sacramento, CA 95610–7632; Telephone: (916) 653–2118.

Copies of the DEIR/DEIS will also be available for inspections at the following public libraries:

- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240–0001.
- Library, Bureau of Reclamation, 6th Avenue and Kipling, Room 167, Building 67, Denver Federal Center, Denver, CO 80225–0007.
- Sacramento Main Library, 8th and I Street, Sacramento, CA 95814.
- Stockton Main Library, 605 N. El Dorado Street, Stockton, CA 95205.
- San Joaquin Delta College, Goleman Library, 5151 Pacific Avenue, Stockton, CA 95205.
- Tracy Public Library, 20 E. Eaton Avenue, Tracy, CA 95376.
- The Library of Congress, Exchange and Gift Division, State Documents Section, Washington DC 20054–4290.
- CLLC-Atlanta, Corp Research Library/Bin 163, 64A Perimiter Center, East Atlanta, GA 30346.
- Council of State Governments, Iron Works Pike/Research, Interstate Loan Library, PO Box 11910, Lexington, KY 40578–1910.
- Bureau of Reclamation, Library D–7905, Bldg. 67, Denver Federal Center, Denver, CO 80225.
- University of California-Los Angeles, Publications Division, 405 Hillgard Avenue, Los Angeles, CA 90024–1484.
- California State University-Los Angeles, CSU–LA/Government Publications, 5151 State University Drive, Los Angeles, CA 90032–4221.
- Metro Water District of So. California, Central Library, Terminal Annex, PO Box 54153, Los Angeles, CA 90054.
- Los Angeles Public Library, Acquisition/Serials, 630 West 5th Street, Los Angeles, CA 90071.
- University of California-Los Angeles, California Depository Librarian Bruman MGI Library A4510, University Research Library, Los Angeles, CA 90095–1575.
- California State University Long Beach, Library-Government Publications, 6101 E. 7th Street, Long Beach, CA 90840.
- University of California-San Diego, Government Documents, Ser ACQ–ACQ Dept. Lib #0175–AP, 9500 Gilman Drive, La Jolla, CA 92093–0175.
- San Diego State University, Government Publications Dept., University Library, San Diego, CA 92182.
- Richard Beaumont, University of California-Riverside, Government Publications Dept., Rivera Library, PO Box 5900, Riverside, CA 92507.
- University of California-Santa Barbara, Government Publications Dept., Santa Barbara, CA 93106–9010.
- Fresno County Free Library, 2420 Mariposa Street, Fresno, CA 93721.
- U.S. Geological Survey, Library, 345 Middlefield Road, Menlo Park, CA 94025.
- David Barnhardt, Public Utilities Commission, Technical Library, 505 Van Ness, San Francisco, CA 94102.
- Stanford University, Government Documents-State, Green Library/ACG2827, Stanford, CA 94305–6004.
- Oakland Public Library, 125 Fourteenth Street, Oakland, CA 94612.
- University of California-Berkeley, Government Documents Dept., General Library, Berkeley, CA 94720–0001.
- University of California-Berkeley, Water Resources Center Archives, 410 O'Brien Hall, Berkeley, CA 94720–1718.
- U.S. Corps of Engineers, Technical Library, 1325 J Street, Sacramento, CA 95814–2922.
- California State University-Chico, Government Publications, Center, Meriam Library, Chico, CA 95929–0295.
- Secretary of State, State Archivist, 1020 O Street, Room 201, Sacramento, CA 95814.
- State Library, GPS–E, 914 Capitol Mall, Sacramento, CA 95814.
- Butte County Library, Publications, 1820 Mitchell Ave, Oroville, CA 95966–5333.
- San Jose Public Library, Documents/Reference Unit, 180 W. San Carlos Street, San Jose, CA 95113.
- Shasta County Public Library, Redding Main Branch, 1855 Shasta Street, Redding, CA 96001–0418.
- Stanislaus County Library, Documents, 1500 I Street, Modesto, CA 95354–1120.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Mr. Alan R. Candlish, Study Manager, CC–102, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom CA 95630, Telephone: (916) 989–7255; or Mr. Stephen Roberts at (916) 653–2118.

Dated: August 8, 1996.

Roger K. Patterson,

Regional Director.

[FR Doc. 96–21058 Filed 8–16–96; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

FY 97 Annual Program Plan and Training Schedule

The National Institute of Corrections (NIC), U.S. Department of Justice, has published its Annual Program Plan—Fiscal Year 1997. The document describes the services and programs to be available to the corrections field during the next fiscal year, which begins October 1, 1996, and ends September 30, 1997.

A separate document, the NIC Schedule of Training Services for Fiscal Year 1997, describes NIC seminars, videoconferences, and other training services to be available for state and local practitioners in adult corrections. It also contains application requirements and forms.

Both documents are available on the Internet (gopher.usdoj.gov, then National Institute of Corrections) or may be obtained by contacting NIC at 320

First Street, NW, Washington, DC 20534; telephone 800–995–6423; fax 202–307–3361; or the NIC Longmont, Colorado, offices at 800–995–6429; fax 303–682–0469.

Susan M. Hunter,

Acting Director.

[FR Doc. 96–20990 Filed 8–16–96; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: August 13, 1996.

Edward C. Hugler,

Deputy Assistant Secretary for Mine Safety and Health.

Affirmative Decisions on Petitions for Modification

Docket No.: M–95–001–C.
FR Notice: 60 FR 9866.
Petitioner: Serendipity Mining, Inc.
Reg Affected: 30 CFR 75.313 (now 30 CFR 75.342).
Summary of Findings: Petitioner's proposal to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted for the No. 4 Mine with conditions for the Mescher permissible three-wheel battery-powered tractors used to load coal.

Docket No.: M–95–006–C.
FR Notice: 60 FR 9867.
Petitioner: C.S. & S. Coal Corporation.
Reg Affected: 30 CFR 75.1710–1.
Summary of Findings: Petitioner's proposal to operate electric mobile equipment without canopies in seam heights up to 48 inches considered acceptable alternative method. Granted for the No. 7 Mine with conditions for two center-driven Joy 21–SC shuttle cars, two S&S Scoops and the Eimco 3510 Roof Bolting Machine.

Docket No.: M–95–007–C.
FR Notice: 60 FR 11680.
Petitioner: Rothermel Coal Company.
Reg Affected: 30 CFR 75.335(a)(1).
Summary of Findings: Petitioner's proposal to construct seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the 11 Vein Slope Mine with conditions for seals installed at the mine.

Docket No.: M–95–012–C.
FR Notice: 60 FR 11680.
Petitioner: Stephen Shingara Jr. Coal Company.
Reg Affected: 30 CFR 75.335 (a)(1).
Summary of Findings: Petitioner's proposal to construct seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the No. 1 Slope with conditions for seals installed in this mine considered acceptable alternative method.

Docket No.: M–95–013–C.
FR Notice: 60 FR 11681.
Petitioner: Stephen Shingara Jr. Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal; to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section; and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions for examination of seals in the intake air haulage slope of this mine.

Docket No.: M–95–014–C.
FR Notice: 60 FR 11681.
Petitioner: Stephen Shingara Jr. Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–95–015–C.
FR Notice: 60 FR 11681.
Petitioner: Stephen Shingara Jr. Coal Company.
Reg Affected: 30 CFR 75.1200(d) & (1).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions for the use of cross sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–95–016–C.
FR Notice: 60 FR 11681.
Petitioner: Stephen Shingara Jr. Coal Company.

Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–95–018–C.
FR Notice: 60 FR 11681.
Petitioner: Pen Coal Corporation.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors with a threaded ring and a spring loaded device on mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load; to have a warning tag on all battery plug connectors on the battery-powered machines that states ''do not disengage plugs under load;'' and to instruct all persons required to operate or maintain the battery-powered machines in the safe practices and provisions provided for in the alternative method of compliance considered acceptable alternative method. Granted for the Frank Branch No. 2 mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of pad locks on battery plugs.

Docket No.: M–95–019–C.
FR Notice: 60 FR 11681.
Petitioner: Copperas Coal Corporation.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors with a threaded ring and a spring loaded device on mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load; to have a warning tag on all battery plug connectors on the battery-powered machines that states ''do not disengage plugs under load''; and to instruct all persons required to operate or maintain the battery-powered machines in the safe practices and provisions provided for in the alternative method of compliance considered acceptable alternative method. Granted for the Red Oak Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–95–023–C.
FR Notice: 60 FR 16165.
Petitioner: U.S Steel Mining Company, Inc.
Reg Affected: 30 CFR 75.1101–1(b).
Summary of Findings: Petitioner's proposal to continue its weekly inspections and functional testing of the complete deluge-type water spray system and to remove blow-off dust covers from the nozzles considered acceptable alternative method. Granted for the Gary No. 50 Mine with conditions for weekly examination and functional testing of deluge type fire suppression systems installed at conveyor belt drives in lieu of dust covers for nozzles of water deluge fire suppression systems at the mine.

Docket No.: M–95–026–C.
FR Notice: 60 FR 16165.
Petitioner: McElroy Coal Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to increase the maximum length of its trailing cables to 800 feet to supply three-phase, 480-volt power to loading machines, shuttle cars, roof bolters, and section ventilation fans during development of longwall panels considered acceptable alternative method. Granted for the McElroy Mine with conditions for the 480-volt loading machines, roof bolters, shuttle cars, and section ventilation fans used in the three-entry longwall panels and six-entry main and submain sections.

Docket No.: M–95–027–C.
FR Notice: 60 FR 16165.
Petitioner: Monterey Coal Company.
Reg Affected: 30 CFR 75.1100–2(i)(1).
Summary of Findings: Petitioner's proposal to use the following materials: 112 Kennedy Metal Stopping Panels with associated head sills and twist clamps, 24 Kennedy Stopping Rib Angles, 2 rolls of tape, 2 twist tools, 2 rolls of brattice cloth, 2 stopping jacks, 2 picks, 2 shovels, 6 buckets of Celtite 10–12 Airtite (or equivalent material for stoppings), and 5 tons of rock dust considered acceptable alternative method. Granted for the No. 2 Mine with conditions for emergency materials readily available at locations not exceeding 2 miles from each working section.

Docket No.: M–95–029–C.
FR Notice: 60 FR 16165.
Petitioner: U.S. Steel Mining Company, Inc.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (4,160 volts) cables to power longwall mining equipment and to train all electrical personnel before the alternative method is implemented considered acceptable alternative method. Granted for the Maple Creek Mine with conditions for the high-voltage equipment located at the mine.

Docket No.: M–95–036–C.
FR Notice: 60 FR 16166.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to increase the maximum length of its trailing cables to 800 feet to supply three-phase, 480-volt power to loading machines, shuttle cars, roof bolters, and section ventilation fans during development of longwall panels considered acceptable alternative method. Granted for the Shoemaker Mine with conditions for the 480-volt loading machines, roof bolters, shuttle cars, and section ventilation fans used in the three-entry longwall panels and six-entry main and submain sections at the mine.

Docket No.: M–95–037–C.
FR Notice: 60 FR 16166.
Petitioner: Cyprus Emerald Resources Corporation.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (4,160 volts) cables to power longwall mining equipment considered acceptable alternative method. Granted for the Emerald Mine No. 1 with conditions for the 4,160-volt high-voltage equipment located at the mine.

Docket No.: M–95–038–C.
FR Notice: 60 FR 16166.
Petitioner: Twentymile Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (4,160 volts) cables to power longwall mining equipment considered acceptable alternative method. Granted for the Foidel Creek Mine with conditions for the 4,160-volt high-voltage equipment located at the mine.

Docket No.: M–95–039–C.
FR Notice: 60 FR 18147.
Petitioner: C & B Mining Company.
Reg Affected: 30 CFR 75.335(a)(1).
Summary of Findings: Petitioner's proposal to construct seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the No. 2 Vein Slope Mine with conditions for seals installed in this mine.

Docket No.: M–95–041–C.
FR Notice: 60 FR 18147.
Petitioner: C & B Mining Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing

requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the No. 2 Vein Slope Mine with conditions for firefighting equipment in the working sections at the mine.

Docket No.: M–95–042–C.
FR Notice: 60 FR 18147.
Petitioner: C & B Mining Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for the No. 2 Vein Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–95–043–C.
FR Notice: 60 FR 18147.
Petitioner: C & B Mining Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the No. 2 Vein Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–95–044–C.
FR Notice: 60 FR 18147.
Petitioner: Kerr-McGee Coal Corporation.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use trailing cables to supply power to the Fletcher single boom roof bolter, Model No. CDR–13–EC–F, Approval No. 2G–2674A–4, and all updated approval extensions of this equipment as applicable and request to amend granted petition (Docket No. M–94–53–C) considered acceptable alternative method. Granted for the Galatia No. 56–1 Mine with conditions for the use of longer trailing cables to supply power to single boom Fletcher roof bolters, Model No. DR–13, approval No. 2G2956A–1, and the Petitto shield mover, Model No. 1039, approval no. 2G–3113A–1.

Docket No.: M–95–045–C.
FR Notice: 60 FR 18147.
Petitioner: Kerr-McGee Coal Corporation.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use trailing cables to supply power to the Fletcher single boom roof bolter, Model No. CDR–13–EC–F, Approval No. 2G–2674A–4, and all updated approval extensions of this equipment as applicable and request to amend granted petition (Docket No. M–91–12–C) considered acceptable alternative method. Granted for the Galatia No. 56–1 Mine with conditions for the use of longer trailing cables to supply power to single boom Fletcher roof bolters, Model No. CDR–13–EC–F, approval No. 2G2674A–4.

Docket No.: M–95–046–C.
Petitioner: Roberts Brothers Coal Company, Inc.
Reg Affected: 30 CFR 75.901(a).
Summary of Findings: Petitioner's proposal to operate its Diesel Powered Generator (DPG) without an earth referenced ground and proposal to use resistors, ground fault relays and trips, and SHD–GC shielded cable in lieu of an earth referenced ground considered acceptable alternative method. Granted for the Cardinal No. 2 Mine with conditions for the diesel powered generator located at the mine.

Docket No.: M–95–054–C.
FR Notice: 60 FR 21831.
Petitioner: CONSOL of Kentucky, Inc.
Reg Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single overhead pipe system with ½ inch orifice automatic sprinklers located on 10-foot centers, to cover 50 feet of fire-resistant belt or 150 feet of nonfire-resistant belt with actuation temperatures between 200 degrees and 230 degrees fahrenheit and with water pressure equal to or greater than 10 psi; and to have sprinklers located not more than 10 feet apart, so that the discharge of water would extend over the belt drive, belt take-up, electrical control, and gear reducing unit considered acceptable alternative method. Granted for the Indian Gap Mine with conditions for the use of a single overhead branch line sprinkler system at main and secondary conveyor belt drives.

Docket No.: M–95–055–C.
FR Notice: 60 FR 21831.
Petitioner: Mountain Valley Management, Inc., T/A Bucket Coal Company.
Reg Affected: 30 CFR 75.335(a)(1).
Summary of Findings: Petitioner's proposal to construct seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the Heather Mine with conditions for seals installed at this mine.

Docket No.: M–95–060.
FR Notice: 60 FR 21832.
Petitioner: Mystic Energy, Inc.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors on mobile battery-powered machines used inby the last open crosscut with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load; to provide a warning tag that states ''Do Not Disengage Plugs Under Load'' on all battery plug connectors on battery-powered machines using the alternative method; and to instruct all persons who are required to operate or maintain the battery-operated machines on safe work practices and procedures considered acceptable alternative method. Granted for the Candice No. 2 Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–95–061–C.
FR Notice: 60 FR 21832.
Petitioner: AMAX Coal West, Inc.
Reg Affected: 30 CFR 77.1304(a).
Summary of Findings: Petitioner's proposal to use petroleum-based lubrication oils, recycled from equipment used at its mine for blending with fuel oil to create ammonium nitrate/fuel oil (ANFO) for use as a blasting agent at its surface coal mine considered acceptable alternative method. Granted for the Eagle Butte Mine with conditions.

Docket No.: M–95–062–C.
FR Notice: 60 FR 21832.
Petitioner: Pen Coal Corporation.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors on mobile battery-powered machines used inby the last open crosscut with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load; to provide a warning tag that states ''Do Not Disengage Plugs Under Load'' on all battery plug connectors on battery-powered machines using the alternative method; and to instruct all persons who are required to operate or maintain the battery-operated machines on safe work

practices and procedures considered acceptable alternative method. Granted for the Develstrace No. 3 Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–95–064–C.
FR Notice: 60 FR 26903.
Petitioner: Shady Lane Coal Corporation.
Reg Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal to construct a refuse fill in an area containing abandoned mine openings considered acceptable alternative method. Granted for the Mine No. 4 with conditions to allow installation of refuse piles over the abandoned mine opening at No. 2 and No. 8 mines.

Docket No.: M–95–065–C.
FR Notice: 60 FR 26903.
Petitioner: Genewal Resources, Inc.
Reg Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal to use Anaconda type SHD+GC, Pirelli type SHD-CENTER-GC, and Tiger Brand type SHD-CGC flame-resistant cables with a flexible No. 16 (A.W.G.) ground check conductor for the ground continuity check circuit considered acceptable alternative method. Granted for the Crandall Canyon Mine with conditions for Genewal Resources, Inc. Crandall Canyon Mine's longwall systems.

Docket No.: M–95–067–C.
FR Notice: 60 FR 29714.
Petitioner: H & S Coal Company.
Reg Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use a increased rope strength/safety factor and secondary safety rope connection in place of such devices considered acceptable alternate method. Granted for the No. 1 Slope Mine with conditions for the use of the gunboat without safety catches.

Docket No.: M–95–070–C.
FR Notice: 60 CFR 29714.
Petitioner: Clinchfield Coal Company.
Reg Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used as intake air courses to ventilate the active working faces, and to dilute and render harmless respirable dust and harmful gases considered acceptable alternative method. Granted for the McClure No. 2 Mine with conditions to allow air coursed through conveyor belt entries to be used to ventilate working places.

Docket No.: M–95–074–C.
FR Notice: 60 FR 29715.
Petitioner: Industrial Coal Corporation.
Reg Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal to seal the mine by removing all sloughed overburden for 10 to 12 feet in front of and to either side of the drift openings in order to allow placement of suitable material for sealing, and to install a rock core underdrain constructed of durable sandstone rock, enclosed in filter fabric to prevent piping, and/or 2 to 3 inch CMP drain for wet seal in the lowest entry; to backfill the portal areas with an impervious, noncombustible material, that contains enough fines to ensure an airtight seal and compacted to 90 percent Proctor dry density; to backfill to 4 feet above drift openings or to 4 feet above any visible cracks above the drifts; and to backfill all exposed coal seams in the vicinity of the openings to a minimum depth of 4 feet above the top of the seam considered acceptable alternative method. Granted for the Mine No. 3 with conditions to allow installation of refuse piles over the abandoned mine opening at No. 2 and No. 8 mines.

Docket No.: M–95–075–C.
FR Notice: 60 FR 29715.
Petitioner: Trapper Mining, Inc.
Reg Affected: 30 CFR 77.1304(a).
Summary of Findings: Petitioner's proposal to allow the addition of petroleum-based solvent (NAPHTHA) to the recycled oil/diesel fuel mixture in the creation of an ammonium nitrate-fuel oil (ANFO) for use as a blasting agent at the mine site which would amend granted petition (Docket No. M–93–54–C) considered acceptable alternative method. Granted for the Trapper Mine with conditions for the use of petroleum-based lubricating oils and solvents in ANFO.

Docket No.: M–95–076–C.
FR Notice: 60 FR 29715.
Petitioner: Twentymile Coal Company.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to use high-voltage submersible pumps in boreholes drilled into a sump area of the mine and request to amend granted petition (Docket No. M–90–79–C) considered acceptable alternative method. Granted for the Foidel Creek Mine with conditions for the use of non-permissible submersible high-voltage pumps located throughout the mine.

Docket No.: M–95–077–C.
FR Notice: 60 FR 29715.
Petitioner: Twentymile Coal Company.
Reg Affected: 30 CFR 75.803.
Summary of Findings: Petitioner's proposal to use high-voltage submersible pumps in boreholes drilled into a sump area of the mine and request to amend granted petition (Docket No. M–90–80–C) considered acceptable alternative method. Granted for the Foidel Creek Mine with conditions.

Docket No.: M–95–086–C.
FR Notice: 60 FR 29715.
Petitioner: Keystone Coal Mining Corporation.
Reg Affected: 30 CFR 75.380(d)(3).
Summary of Findings: Petitioner's proposal to continue utilizing the passable escapeway as it presently exists for approximately 8 to 9 feet as an alternative to enhancing the height of the overcast area due to geologic conditions of that area of the mine and assertion that application of the standard would result in a diminution of safety to the miners considered acceptable alternative method. Granted for the Emilie No. 1 Mine with conditions for the continued use of the primary escapeway less than seam height over the overcast at three cross cuts inby the belt/track haulage slope.

Docket No.: M–95–094–C.
FR Notice: 60 FR 39429.
Petitioner: Western Mingo Coal Company.
Reg Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses considered acceptable alternative method. Granted for the Northern Mingo No. 2 Mine with conditions to allow air coursed through conveyor belt entries to be used to ventilate working places.

Docket No.: M–95–095–C.
FR Notice: 60 FR 39429.
Petitioner: CONSOL of Kentucky, Inc.
Reg Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single overhead pipe system with 1/2-inch orifice automatic sprinklers located on 10-foot centers to cover 50 feet of fire-resistant belt or 150 feet of nonfire-resistant belt with actuation temperatures between 200 degrees and 230 degrees fahrenheit and with water pressure equal to or greater than 10 psi; to have automatic sprinklers located not more than 10 feet apart in order for the discharge of water to extend over the belt drive, belt take-up, electrical control, and gear reducing unit; and to conduct annual functional tests of each water sprinkler system considered acceptable alternative method. Granted for the 9ab–h4 Mine

with conditions for a single overhead pipe sprinkler system.

Docket No.: M–95–096–C.
FR Notice: 60 FR 39429.
Petitioner: Cyprus Cumberland Resources Corporation.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to use nonpermissible submersible pumps to dewater bleeder sumps or bleeder entries in order to provide unrestricted airflow into the return air shaft or through the return entries and assertion that application of the standard would result in a diminution of safety to the miners considered acceptable alternative method. Granted for the Cumberland Mine with conditions for the use of non-permissible submersible 480-volt pumps located throughout the cumberland mine, including in the area at or near the bottom of the No. 1 bleeder shaft of the No. 32 longwall panel.

Docket No.: M–95–097–C.
FR Notice: 60 FR 39429.
Petitioner: Cyprus Empire Corporation.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's result to amend item 10 of previously granted petition (Docket No. M–84–263–C) considered acceptable alternative method. Granted for the Eagle No. 5 Mine with conditions.

Docket No.: M–95–098–C.
FR Notice: 60 FR 39429.
Petitioner: Mt. Top Coal Company.
Reg Affected: 30 CFR 75.335(a)(1).
Summary of Findings: Petitioner's proposal to construct seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the Mt. Top Coal Company Mine with conditions for seals installed at the mine.

Docket No.: M–95–118–C.
FR Notice: 60 FR 52217.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal to use high-voltage cables (4,160-volts) CABLEC/BICC Anaconda Brand, 5kV, 3/C, type SHD+GC; Amercable Tiger Brand, 3/C, 5kV, type SHD–CGC; Pirelli 5kV, 3/C, type SHD–CENTER–GC; or similar 5,000-volt conductor cables with an internal ground check conductor smaller than No. 10 A.W.G. as a part of its longwall mining system considered acceptable alternative method. Granted for the Robinson Run No. 95 Mine with conditions for Consolidated Coal Company's, Robinson Run No. 95 Mine's longwall systems.

Docket No.: M–95–120–C.
FR Notice: 60 FR 52217.
Petitioner: Energy West Mining Company.
Reg Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's request to amend previously granted petition (Docket No. M–94–107–C) to include its new Trail Mountain Mine, an extension of the Cottonwood Mine for use of the Cablec Anaconda Brand 5kV, 3/C, type SHD+GC; Pirelli 5kV, 3/C, type SHD–CENTER–GC; or Tiger Brand 5kV, type SHC–CGC; on high-voltage longwall equipment considered acceptable alternative method. Granted for the Deer Creek Mine with conditions for Energy West Mining Company's, Deer Creek and Trail Mountain Mine's longwall systems.

Docket No.: M–95–121–C.
FR Notice: 60 FR 52217.
Petitioner: Energy West Mining Company.
Reg Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's requests to amend previously granted petition (Docket No. M–94–92–C) to include its new Trail Mountain Mine for the use of fire extinguishers instead of rock dust at temporary electrical installations considered acceptable alternative method. Granted for the Deer Creek Mine, Cottonwood Mine and Trail Mountain Mine.

Docket No.: M–95–131–C.
FR Notice: 60 FR 52219.
Petitioner: Performance Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (4,160 volts) cables to power longwall equipment considered acceptable alternative method. Granted for the Upper Big Branch South Mine with conditions for the 4,160-volt longwall equipment.

Docket No.: M–95–138–C.
FR Notice: 60 FR 54391.
Petitioner: McElroy Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (4,160 volts) cables in by the last open crosscut to supply power to longwall mining equipment considered acceptable alternative method. Granted for the McElroy Mine with conditions for the 4,160-volt longwall equipment.

Docket No.: M–95–153–C.
FR Notice: 60 FR 57024.
Petitioner: Twentymile Coal Company.
Reg Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's request to amend previously granted petition (Docket No. M–92–55–C), to use high-voltage (2400 and 4160-volts) cables made by any manufacturer instead of one manufacturer, type Tiger Brand SHD–CGC, Pirelli SHD–Center–GC, and Cablec SHD + GC Cables, or any cable manufactured to ICEA specification S–75–381 for type SHD–3 conductor cable that is 5000 volt MSHA-accepted flame-resistant cable, with a ground-check wire that is 16 A.W.G minimum for its longwall systems considered acceptable alternative method. Granted for the Foidel Creek Mine with conditions for Twentymile Coal Company, Foidel Creek Mine's longwall systems.

[FR Doc. 96–21021 Filed 8–16–96; 8:45 am]
BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96–094)]

NASA Advisory Council, Advisory Committee on the International Space Station (ACISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Advisory Committee on the International Space Station.

DATES: September 11, 1996, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Marshall Space Flight Center, Building 4200, Room P110, Huntsville, AL 35812.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Luna, Code M–4, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1101.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:
—Review of International Partnerships
—Research Requirements Documents
—Contingency Planning
—Software Integration
—MSFC Payload Processing
—KSC Ground Processing

It is imperative that the meeting be held on this date to accommodate the

scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 13, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–21043 Filed 8–16–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–096]

NASA Advisory Council; Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Sciences and Applications Advisory Subcommittee.

DATES: September 25, 1996, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–3B, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley M. Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0813.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

Program Status Report
Space Station Resources and Utilization
Strategic Planning and the HEDS Enterprise
Low-Temperature Microgravity Physics
Reports from Chairs of Discipline Working Groups
Informal Discussion

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 12, 1996.

Leslie Nolan,

Chief, Management Controls Office, National Aeronautics and Space Administration.

[FR Doc. 96–21045 Filed 8–16–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–095]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Monday, September 30, 1996, 8:30 a.m. to 5:00 p.m.; Tuesday, October 1, 1996, 8:30 a.m. to 5:00 p.m.; Wednesday, October 2, 1996, 8:30 a.m. to 2:30 p.m.

ADDRESSES: NASA Headquarters, Conference Room MIC 6–A&B, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Guenter R. Riegler, Code SR, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1588.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Status of prior SScAC recommendations
—FY 98 Budget Request
—Subcommittee Business
—Space Science Strategic Planning Process

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 12, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–21044 Filed 8–16–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice (96–098)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Bishop Industries, Inc., of Houston, Texas 77258–0422, has applied for an exclusive license to practice the invention disclosed in NASA Case No. MSC–22366–1, entitled ''Method and Apparatus for Measuring Fluid Flow,'' for which a U.S. Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Hardie R. Barr, Patent Attorney, Johnson Space Center.

DATES: Responses to this notice must be received by October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, Texas; telephone (713) 483–1003; fax (713) 244–8452.

Dated: August 2, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–21047 Filed 8–16–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice (96–093)]

Notice of a Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Drexelbrook Engineering Company, has applied for a partially exclusive license to practice the invention disclosed in NASA Case No. LAR–15348–1, entitled ''THIN-LAYER COMPOSITE-UNIMORPH PIEZOELECTRIC DRIVER AND SENSOR, ''THUNDER,'' '' for which a U.S. Patent Application was filed on April 4, 1995, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this notice must be received by October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; (757) 864–9190.

Dated: August 12, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–21042 Filed 8–16–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–097]

Notice of a Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Morgan Matroc, Inc., has applied for a partially exclusive license to practice the invention disclosed in NASA Case No. LAR–15348–1, entitled ''THIN-LAYER COMPOSITE-UNIMORPH PIEZOELECTRIC DRIVER AND SENSOR, 'THUNDER,' '' for which a U.S. Patent Application was filed on April 4, 1995, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this notice must be received by October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; (757) 864–9190.

Dated: August 9, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–21046 Filed 8–16–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Non-License EA 96–288]

Middle Monongahela Industrial Development Association, Inc. (MIDA); Confirmatory Order

I

Middle Monongahela Industrial Development Association, Inc. (MIDA) is a non-profit organization that exists in Monongahela County, PA for the purpose of encouraging businesses to locate in that geographical area. One of the business entities that existed in the area was GRD Steel Corporation (GRD), a company engaged in the manufacturing of carbon steel. GRD was located at the Mid Mound Center, Route 136, East Monongahela, Pennsylvania. GRD is a licensee of the NRC, specifically, the holder of NRC License No. 37–30147–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on February 6, 1995 pursuant to 10 CFR Part 30. License No. 37–30147–01 authorizes the possession and use of up to 10 millicuries of Cobalt-60 in sealed sources (with a maximum activity per source of 3.3 millicuries).

II

GRD possessed two gauges each containing approximately 3.3 millicuries of Cobalt-60, a radioactive material, at its Mid Mound Center facility. GRD has ceased operations (the steel mill had been shut down). As a result of its purchase at a sheriff foreclosure sale of property of GRD at the Mid Mound Center, MIDA now: (1) holds the title to both GRD's gauges and GRD's Mid Mound Center facility in East Monongahela; and (2) is in possession of the two gauges each containing Cobalt-60, a highly radioactive byproduct material.

In order to receive or possess byproduct material, an NRC license is required by the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 30.3. MIDA does not have a license to receive or possess this byproduct material.

It does appear that MIDA has taken some action to maintain security of the gauges because the gauges have been maintained with their shutters locked in the closed position. However, the NRC was recently informed that the building where the gauges are possessed has been subject to at least one break-in. The gauges were not stolen or damaged. Since the break-in, the NRC understands that the perpetrators have been apprehended, that local police patrols are occurring, and daily walk-throughs by a local president of the steel union are being conducted.

III

These gauges contain radioactive material which, if not properly handled or secured, could cause a member of the public to receive a significant radiation exposure. The NRC must be able to ensure that radioactive byproduct material subject to NRC regulation only be possessed by persons having an NRC license authorizing such possession, and that security of the radioactive material is maintained at all times to ensure that it is not lost or stolen. MIDA has not met these conditions. Therefore, on August 9, 1996, Mr. Charles W. Hehl and other members of the NRC Region I office contacted Ms. Lue Anne Pawlick of MIDA during which MIDA committed to implement the terms in Section IV of this Order and agreed to waive their rights to a hearing.

I find that MIDA's commitments described in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that these commitments be confirmed by this Order. MIDA has agreed to this action. Pursuant to 10 CFR 2.202, I have also determined, based on the Licensee's consent and on the significance of these matters, described above, that the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *it is hereby ordered,* effective immediately, that MIDA:

1. assures that it will maintain control of the NRC-licensed gauges possessed at Mid Mound Center, Route 136, East Monongahela, Pennsylvania and that the facility and gauges will remain locked at all times;

2. requests additional patrols from the local police in the area, until such time as the gauges are transferred to an authorized recipient;

3. performs daily walk-throughs of the facility to ensure that the gauges have not been tampered with;

4. shall either obtain a license from the NRC to possess the material or transfer the material to a specific NRC or Agreement State licensee authorized to possess such material; in the absence of obtaining a license from the NRC to possess the gauges within 90 days from the date of this Order, transfers the gauges either back to the manufacturer, or to another authorized recipient

5. by August 19, 1996 inform the NRC under oath or affirmation regarding the specific actions MIDA will take to comply with conditions 1, 2, and 3 above.

The Regional Administrator, Region I, may relax or rescind, in writing, any of the above conditions upon a showing by MIDA of good cause.

V

MIDA has agreed to waive its right to a hearing. Any person adversely affected by this Confirmatory Order, other than MIDA, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the

Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee, adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland, this 12th day of August 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 96–21039 Filed 8–16–96; 8:45 am]

BILLING CODE 7590–01–P

Westinghouse Electric Corporation; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated May 30, 1996, Shannon T. Doyle (Petitioner) has requested that the NRC take immediate action with regard to Westinghouse Electric Corporation (Westinghouse). The Petitioner requests that the NRC institute a show cause proceeding pursuant to 10 CFR 2.202 and/or impose a civil penalty upon Westinghouse. As a basis for the request, the Petitioner asserts that Westinghouse has failed to correct the record and, through its counsel, has provided material false statements to a Department of Labor Administrative Law Judge (DOL ALJ) in a case arising under the Energy Reorganization Act (ERA), 89–ERA–022. Specifically, the Petitioner asserts that Westinghouse has knowingly let remain the false impression of the ALJ that registration with the National Registry of Radiation Protection Technologists (NRRPT) is a requirement for the holding of the position of health physics technician in the nuclear power industry, and has falsely maintained that an NRRPT filing to the NRC establishes that a passing score on the registration test is required for the position of health physics technician.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Enforcement. With regard to the Petitioner's request that immediate action be taken, it should be noted that the NRC takes immediate action in situations where it appears that there is a significant threat to public health and safety that warrants some immediate action to protect the public. The allegations and information in the Petition do not involve a significant threat to public health and safety and the Petition does not present significant new information to indicate that such a threat exists. Therefore, the request for immediate action is denied. As provided by 10 CFR 2.206, action will be taken on the remaining portions of the Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C. 20555.

Dated at Rockville, Maryland this 9th day of August 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 96–21038 Filed 8–16–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. A96–22; Order No. 1130]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

In the Matter of: Shiloh, Virginia 22549 (James R. Owens, Petitioner).

Issued August 13, 1996.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III

Docket Number: A96–22

Name of Affected Post Office: Shiloh, Virginia 22549

Name(s) of Petitioner(s): James R. Owens

Type of Determination: Closing

Date of Filing of Appeal Papers: August 8, 1996

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by August 23, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

August 8, 1996 Filing of Appeal letter
August 13, 1996 Commission Notice and Order of Filing of Appeal
September 3, 1996 Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
September 12, 1996 Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)]
October 2, 1996 Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)]
October 17, 1996 Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)]

October 24, 1996 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]

December 6, 1996 Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 96–21014 Filed 8–16–96; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22138; 812–10196]

Benham California Tax-Free Trust, et al.; Notice of Application

August 13, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Benham California Tax-Free Trust; Benham Equity Funds; Benham Financial Services, Inc. (''BFS''); Benham Government Income Trust; Benham International Funds; Benham Investment Trust; Benham Management Corporation (''BMC''); Benham Manager Funds; Benham Municipal Trust; Benham Target Maturities Trust; Capital Preservation Fund, Inc.; Capital Preservation Fund II, Inc.; all future investment companies for which BMC acts as investment adviser and all existing and future series of the foregoing investment companies (the ''Benham Funds''); Investors Research Corporation (''IRC''); TCI Portfolios, Inc.; Twentieth Century Capital Portfolios, Inc.; Twentieth Century Investors, Inc.; Twentieth Century Premium Reserves Inc.; Twentieth Century Services, Inc. (''TCS''); Twentieth Century Strategic Asset Allocations, Inc.; Twentieth Century World Investors, Inc.; all future investment companies for which IRC acts as investment adviser and all existing and future series of the foregoing investment companies (the ''Twentieth Century Funds,'' together with the Benham Funds, the ''Funds''); and any future investment adviser to the Funds which is a direct or indirect wholly-owned subsidiary of Twentieth Century Companies, Inc. (''TCC''), BFS, and TCS.

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain investment companies to deposit their uninvested cash in joint accounts and invest the cash in short-term investments, including repurchase agreements.

FILING DATE: The application was filed on June 11, 1996, and amended on August 12, 1996. Applicants inadvertently indicated on the application and the amendment that the file number was 812–7549. The correct file number is 812–10196.

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 September 9, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1665 Charleston Road, Mountain View, CA 94043 or 4500 Main Street, Kansas City, Missouri 64141–6200.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, 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. Each of the Funds currently has an effective registration statement under the Act and maintains a public offering of its shares or shares of its various series or portfolios. BMC is a registered investment adviser under the Act and serves as investment adviser to the Benham Funds. IRC is a registered investment adviser under the Act and serves as investment adviser to the Twentieth Century Funds, and to individual, corporate, charitable, and retirement accounts (''Private Accounts''). BFS serves as transfer agent for the Benham Funds. TCS serves as transfer agent to the Twentieth Century Funds. BFS, BMC, IRC, and TCS are wholly-owned subsidiaries of TCC, a Delaware corporation.

2. Applicants request that any relief granted pursuant to the application apply to any present or future registered investment companies that are advised by BMC, IRC, or any wholly-owned subsidiary of TCC; Private Accounts for which BMC or IRC serve as investment adviser; and any entity controlling, controlled by, or under common control with TCS and BFS that serves as transfer agent for any of the Funds. All Funds that intend to rely upon the requested order are named as applicants.

3. The SEC previously issued an order that allows the Benham Funds to use a Joint Account to purchase repurchase agreements on a pooled basis.[1] On June 1, 1995, BMC, BFS and their affiliates were acquired by TCC. As a result of this transaction, the Twentieth Century Funds became affiliates of the Benham Funds. Because the previous order does not extend to the Twentieth Century Funds, applicants seek a new order that grants authorization to the Benham Funds and the Twentieth Century Funds to use Joint Accounts. In addition, applicants seek to adopt the conditions that the SEC now requires of applicants who request this type of relief, and to revise the nature of the relief granted to include investments other than repurchase agreements.

4. Applicants propose to allow each Fund to participate in joint account arrangements (''Joint Accounts'') for the purposes of investing in: (a) repurchase agreements collateralized fully, as defined in rule 2a–7 under the Act; (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term money market instruments, including variable rate demand notes and other tax-exempt money market instruments, that constitute ''Eligible Securities'' (as defined in rule 2a–7 under the Act) (collectively, ''Short-Term Investments'') as permitted by its investment policies and restrictions.

5. Each of the Funds and Private Accounts (collectively, ''Participants'') has, or may be expected to have, uninvested cash balances with its custodian bank which would not otherwise be invested in portfolio securities by the portfolio manager at the end of each trading day. In the normal course of business, such assets of each Participant are, or would be, invested in Short-Term Investments in

[1] *Benham Equity Funds*, Investment Company Act Release Nos. 17984 (Feb. 6, 1991) (notice) and 18035 (Mar. 12, 1991) (order).

order to earn additional income for that Participant.

6. BFS, as transfer agent for the Benham Funds, maintains certain accounts on behalf of the Benham Funds at a variety of banks and financial institutions. Each of the Twentieth Century Funds maintains a similar account at a local banking institution. Monies forwarded to BFS or TCS by investors for the purchase of additional shares of the Funds are placed in these accounts (''Purchase Accounts'') while purchase orders are processed. The money deposited in the Purchase Accounts is not available for investment by a Fund until it is wired to each Fund's custodian bank the following day. The Funds, do, however, earn income on monies deposited in a Purchase Account. Applicants propose to establish a single joint Purchase Account into which purchase checks received by all of the Participants would be deposited. The Participants would negotiate the rate of interest on monies held in the joint Purchase Account. The joint Purchase Account would operate as, and be subject to the conditions for, a Joint Account, except that money placed in a joint Purchase Account would be invested only in repurchase agreements.

7. Participants may, but are not obligated to, invest not only cash which in the absence of a Joint Account would remain uninvested, but also cash which in the absence of a Joint Account would be individually invested in Short-Term Investments pursuant to a Participant's investment policies.

8. The record owner of a Joint Account or joint Purchase Account will be the participant's custodian or a nominee of the Participant's respective custodians. Each Participant that deposits cash into a Joint Account or joint Purchase Account will be beneficial owner of: (a) the cash so deposited plus interest, if any earned thereon; and (b) the Participant's *pro rata* share of any securities and income from any securities purchased with the Participant's cash.

9. Each Participant would participate in the Joint Account on the same basis as every other Participant in conformity with its fundamental investment objectives and restrictions. Future participants will be required to participate in the Joint Account on the same terms and conditions as the existing Participants. BMC, IRC, and any future investment adviser or subadviser to the Participants, which is a direct or indirect wholly-owned subsidiary of TCC (''Advisers'') would have no monetary participation in the account, but would be responsible for investing amounts in the account, establishing accounting and control procedures, and ensuring the equal treatment of each Participant.

10. Each of the Participants has established the same systems and standards relating to repurchase agreements. These standards include creditworthiness standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreement will be at least 100% collateralized at all times.

11. The Participants generally do not enter into repurchase agreements in which the counterparty (or one of its affiliated persons) may have possession of, or control over, the collateral which is the subject of the agreement (''Hold-in Custody Repurchase Agreements''). The Participants will not enter into Hold-in Custody Repurchase Agreements with their custodian banks except in those cases where cash is received very late in the business day and otherwise would be unavailable for investment.

Applicants' Legal Analysis

1. Section 17(d) of the Act makes it unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which the registered investment company is a joint or a joint and several participant with such person in contravention of rules and regulations proscribed by the SEC. Rule 17d–1 provides that an affiliated person of a registered investment company, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement.

2. Each Participant, by participating in a Joint Account or joint Purchase Account, and the Advisers, by managing the Joint Account or joint Purchase Account, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d). In addition, the proposed accounts could be deemed to be ''joint enterprises or other joint arrangements'' within the meaning of rule 17d–1.

3. Applicants represent that the proposed method of operating the Joint Account will not result in any conflicts of interest between any of the Participants or between a Participant and its respective Adviser. Applicants believe that there does not appear to be any way in which operations of the Joint Account would result in greater benefit to one Participant than to another.

4. Applicants believe that the Joint Accounts could result in certain benefits to the Participants. For example, the Participants may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, it is possible to negotiate a rate of return on larger repurchase agreements that is higher than the rate on smaller repurchase agreements.

5. Applicants believe that one of the benefits of the Joint Accounts is that by reducing the number of trade tickets which each government securities dealer will have to write, repurchase transactions will be simplified for those organizations, with a concomitant reduction for errors.

6. For the reasons set forth above, applicants believe that granting the requested order is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act and the intention of rule 17d–1.

Applicants' Conditions

Applicants will comply with the following procedures as conditions to any SEC order:

1. The Joint Accounts or joint Purchase Accounts will not be distinguishable from any other accounts maintained by the Participants at their custodians except that monies from the Participants will be deposited in the Joint Account or joint Purchase Account on a commingled basis. The Joint Accounts or joint Purchase Accounts will not have separate existences and will not have any indicia of separate legal entities. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by the Advisers of uninvested cash balances.

2. Cash in the Joint Accounts will be invested in one or more of the following, as directed by the Advisers: (a) repurchase agreements ''collateralized fully'' as defined in rule 2a–7 under the Act; (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term money market instruments, including variable rate demand notes and other tax-exempt money market instruments, that constitute ''Eligible Securities'' (as defined in rule 2a–7 under the Act). Cash in the joint Purchase Accounts will earn a negotiated rate of interest or be invested in overnight repurchase agreements ''collateralized fully'' as

defined in rule 2a–7 under the Act. No Participant would be permitted to invest in a Joint Account or joint Purchase Account unless the Short-Term Investments made by the Participant in such Joint Account or joint Purchase Account satisfied the investment policies and guidelines of that Participant. Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less and other Short-Term Investments would have a remaining maturity of 90 days or less, as calculated in accordance with rule 2a–7 under the Act.

3. All assets held in the Joint Accounts would be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules, or orders.

4. Each Participant that is a registered investment company valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Account in which such Participant has an interest (determined on a dollar-weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of assets held in a Joint Account on that day.

5. In order to assure that there will be no opportunity for one Participant to use any part of a balance of a Joint Account or joint Purchase Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account or joint Purchase Account for any reason, although each Participant would be permitted to draw down its entire balance at any time. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or joint Purchase Account or otherwise adversely affect the other Participants. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Participant will retain the sole rights of ownership of any of its assets invested in the Joint Account or joint Purchase Account, including interest payable on such assets invested in the Joint Account or joint Purchase Account.

6. The Advisers will administer the investment of cash balances in, and the operation of, the Joint Accounts or joint Purchase Accounts as part of their general duties under their advisory agreements with Participants and will not collect any additional or separate fees for advising any Joint Account or joint Purchase Account.

7. The administration of the Joint Accounts or joint Purchase Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The directors or trustees of the Funds will adopt procedures pursuant to which the Joint Accounts or joint Purchase Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. The directors or trustees will make and approve such changes as they deem necessary to ensure that such procedures are followed. The directors or trustees will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the proposed procedures. Furthermore, the directors or trustees will only permit a Participant to continue to participate in a Joint Account or joint Purchase Account if they determine that there is a reasonable likelihood that the Participant and its shareholders will benefit from the Participant's continued participation.

9. Any Short-Term Investment made through the Joint Accounts will satisfy the investment criteria of all Participants in that investment. Repurchase agreements purchased through a joint Purchase Account will satisfy the investment criteria of all Participants in the investment.

10. Each Participant's investment in a Joint Account will be documented daily on the books of each Participant and the books of its custodian. Each Participant will maintain records (in conformity with section 31 of the Act and rules thereunder) documenting for any given day, its aggregate investment in a Joint Account and its *pro rata* share of each Short-Term Investment made through such Joint Account. Each Participant that is not a registered investment company or registered investment adviser will make available to the SEC, upon request, such books and records with respect to its participation in a Joint Account.

11. Every Participant in the Joint Accounts will not necessarily have its cash invested in every Short-Term Investment. However, to the extent that a Participant's cash is applied to a particular Short-Term Investment, the Participant will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Participant. This condition shall also apply to the repurchase agreements purchased through a joint Purchase Account.

12. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (a) The Advisers believe the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Participants in the investment because of downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. The Adviser may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the investment if the cost of such transaction will be borne solely by the selling Participants and the transaction will not adversely affect other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

13. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid (''Illiquid Joint Account Investments''). For any Participant that is an open-end investment company registered under the Act, if an Adviser cannot sell the instrument, or the Participant's fractional interest in such instrument, pursuant to the preceding condition, such Illiquid Joint Account Investments shall be included among those securities which are subject to the restriction that the fund may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21055 Filed 8–16–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37548; File No. SR–GSCC–96–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Clearing Fund Collateral and Loss Allocation Provisions

August 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 28, 1996, the Government

[1] 15 U.S.C. 78s(b)(1) (1988).

Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. GSCC amended this filing on July 25, 1996.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to modify its rules and related information to expand the types of securities that are deemed eligible for clearing fund collateral and to redefine the concept of current trading activity for loss allocation purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Clearing Fund Collateral

GSCC proposes to expand the types of securities that are deemed eligible for clearing fund collateral to include all eligible netting securities. The purpose of the clearing fund is (i) to have on deposit from each netting member assets sufficient to satisfy any losses that might be incurred by GSCC or its members as the result of default by a member and the resultant close out of that member's settlement positions; (ii) to maintain a total asset amount sufficient to satisfy potential losses to GSCC and its members resulting from the failure of more than one member; and (iii) to ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations.

GSCC Rule 4 requires each netting member to make and to maintain a deposit to the clearing fund, and Section 4 thereof prescribes the form that a netting member's clearing fund deposit must take. Currently, there are three types of eligible clearing fund collateral: cash, eligible Treasury securities, and eligible letters of credit. An eligible Treasury security is defined as an unmatured, marketable debt security in book-entry form that is a direct obligation of the U.S. government. In practice, GSCC accepts only treasury bills, notes, and bonds as collateral.[4] Conversely, GSCC currently processes a broad range of securities (*i.e.*, eligible netting securities) through the netting system. GSCC proposes to expand the types of securities that will be deemed acceptable forms of clearing fund collateral [5] to include all securities that are eligible for the netting system (*e.g.*, any non-mortgage-backed security, including zero-coupon securities, issued or guaranteed by the U.S., a U.S. government agency or instrumentality, or a U.S. government-sponsored corporation). GSCC believes that the risks associated with this broader range of government securities are minimal and can be managed in an appropriate fashion, as discussed below.

GSCC believes that an expansion of acceptable clearing fund collateral will benefit its members by providing them with more flexibility in meeting their clearing fund obligations and that the expansion will enable GSCC to maximize the liquidity of the clearing fund at risk levels that are not significantly higher than those present under the current definition. The securities in the eligible netting security category are eligible for settlement on a book-entry basis over the Fedwire, are liquid, and are not subject to a high degree of price volatility. Nonetheless, GSCC intends to limit liquidity and price volatility risks by applying an appropriate haircut percentage to each type of security accepted as clearing fund collateral. The haircut will be at least equal to the haircut GSCC takes on eligible Treasury securities,[6] and in no event will the haircut be lower than that applied to the relevant security by GSCC's liquidity bank.

Furthermore, pursuant to action by its Board of Directors, under the proposed rule change GSCC will retain the right to refuse to accept particular types of collateral for liquidity or other reasons. Such refusal could arise under a variety of circumstances such as GSCC's liquidity bank's reluctance to accept a certain type of security as collateral for an extension of credit.

2. Loss Allocation

Rule 20, Section 4(c) of GSCC's rules provides that upon a member's default GSCC will close out the positions of the defaulting member. If the close out of all the defaulting member's positions results in GSCC incurring a loss, that loss will be allocated pursuant to GSCC Rule 4.

Under Section 8 of Rule 4, GSCC looks first to the defaulting member's clearing fund collateral. If the defaulting member's collateral does not fully cover GSCC's loss, GSCC determines the proportion of the remaining loss that arose in connection with non-brokered (*i.e.*, direct) transactions and the proportion that rose in connection with brokered transactions. Brokered transactions are categorized as either brokered transactions involving only members or brokered transactions involving a nonmember on one side of the trade.

To the extent a remaining loss is determined to arise in connection with direct transactions, the loss is allocated pro rata among netting members other than interdealer brokers based on the dollar value of the trading activity of each such netting member with the defaulting member netted and novated on the day of default. If the loss is determined to arise in connection with member brokered transactions, GSCC allocates ten percent of the loss to the interdealer broker netting members on an equal basis regardless of the level of trading activity of each such broker with the defaulting member. The remainder of the loss is divided pro rata among all other netting members based upon the dollar value of each netting member's trading activity through interdealer brokers with the defaulting member netted and novated on the day of default. If the loss is determined to arise in connection with nonmember brokered transactions, GSCC allocates ten percent of the loss to the interdealer broker netting members on an equal basis regardless of the level of trading activity of each such broker with the defaulting member. The remainder of the loss is allocated pro rata among the

[2] Letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (July 22, 1996).

[3] The Commission has modified the text of the summaries prepared by GSCC.

[4] Currently, only coupon bearing Treasury notes and bonds are eligible as clearing fund collateral. *See* Securities Exchange Act Release No. 33237 (December 1, 1993), 58 FR 63414.

[5] At this time no change is proposed with respect to the cash and letters of credit eligible for clearing fund deposits.

[6] Section 4 of GSCC Rule 4 provides that eligible Treasury securities with a remaining maturity of greater than one year and less than ten years are subject to a three percent haircut while securities with a remaining maturity of ten years or greater are subject to a five percent haircut. GSCC does not propose to change these existing haircut provisions at this time.

Category 2 interdealer broker netting members that were parties to such nonmember brokered transactions based upon the dollar value of each such broker member's trading activity with the derfaulting member netted and novated on the day of default.[7]

An important principle in the loss allocation process is the definition of ''trading activity with the defaulting member netted and novated on the day of default.'' [8] GSCC's rules define this as trading activity with a defaulting member submitted by a netting member that was compared, entered the net, and was novated on the business day on which the failure of the defaulting member to fulfill its obligations to GSCC occurred. However, if the aggregate level of such trading activity is less than the dollar value amount of the defaulting member's securities liquidated pursuant to GSCC's close out procedure, the term will encompass trading activity going back as many days as is necessary to reach a level of activity that is equal to or greater than the dollar value amount of such liquidated securities.

GSCC proposes to modify its loss allocation procedures by redefining the concept of ''trading activity with the defaulting member netted and novated on the day of default'' to capture a level of trading activity that is at least five times the dollar value amount of the securities of the defaulting member that are liquidated. The five-fold multiple is based on the approximate netting factor of eighty percent. Historically, the aggregate transactions processed through GSCC's netting system net down to approximately twenty percent of the aggregate transactional volume (*i.e.*, for approximately every five transactions that enter the netting process, only one needs to be settled through the movement of securities and cash).

GSCC's current approach to loss allocation focuses on the date on which a transaction is netted and novated by GSCC and this will continue to be the case. However, with the advent of netting of repurchase agreements (''repos'') and the resultant increase in the number of relatively longterm transactions introduced into the netting process, GSCC has reevaluated its loss allocation process with a view toward better taking into account the duration of netted transactions.

The proposed approach does not take into account the duration of the trade (*i.e.*, t he time between trade date and settlement date). Rather, GSCC seeks a balance between assessing transactions based purely on when they were entered into versus taking into account their duration by expanding the amount of trading that will be encompassed for loss allocation purposes. GSCC believes this will have the effect of establishing a greater incentive for members to assess the creditworthiness of counterparties.

GSCC believes the proposed rule change is consistent with its obligations under Section 17A of the Act [9] because by broadening the range of securities acceptable as clearing fund collateral and by modifying the loss allocation procedures to encompass more trades, GSCC will facilitate member transactions and will cause members to assess the creditworthiness of their counterparties based on duration of transactions. This should promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–96–05 and should be submitted by September 9, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21054 Filed 8–16–96; 8:45 am]

BILLING CODE 8010–01–M

[7] Category 1 interdealer brokers act exclusively as brokers and trade only with netting members and with certain grandfathered nonmember firms. Category 2 interdealer brokers are permitted to have up to ten percent of their business with nonnetting members other than grandfathered nonmembers.

[8] GSCC Rule 4, Section 8(a)(v).

[9] 15 U.S.C. 78q–1 (1988).

[10] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37549; File No. SR–NSCC–96–13]

Self Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Guarantee of When-Issued and Balance Order Trades

August 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 21, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. On August 1, 1996, NSCC amended the proposed rule change.[2] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Julie Beyers, Associate Counsel, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (August 1, 1996).

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

NSCC proposes to modify its rules and procedures to guarantee when-issued and when-distributed (collectively ''when-issued'') and balance order trades as of midnight on the day the trades are reported to members as compared/recorded.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC does not currently guarantee when-issued or balance order trades. The purpose of the proposed rule change is to extend NSCC's guarantee for members to these trades. NSCC proposes to guarantee when-issued and balance order trades at the same point in the clearance and settlement process as it guarantees regular-way trades in the Continuous Net Settlement (''CNS'') accounting operation. Regular-way CNS trades are guaranteed as of midnight on the day the trades are reported to members as compared/recorded. The proposed guarantee of when-issued and balance order trades is intended to provide NSCC's members with greater certainty in the settlement of such trades.

NSCC intends to collateralize its increased exposure from guaranteeing when-issued and balance order trades by collecting clearing fund based on market risk and liquidation risk.[4] With respect to CNS trades, the calculation of the market risk component is based on a rolling average of the prior twenty days' mark-to-market differential. This is the method NSCC proposes to use for balance order trades. NSCC proposes to use the market risk component for when-issued trades based on the mark-to-market differential for the previous business day only. A mark-to-market differential based on the previous business day only for when-issued trades is necessary because of the typically more volatile nature of when-issued trades.

With respect to CNS trades, the calculation of the liquidation risk component is based on all pending trades and failed trades. The liquidation risk component for when-issued trades will be based only upon pending when-issued trades. The liquidation risk component for balance order trades will be based on all pending balance order trades and failed trades to the extent the contra-party to any such failed trade is a regional interface account.

Accordingly, NSCC proposes to modify Addendum M to its Rules and Procedures, Statement of Policy in Relation to the Completion of Pending CNS Trades, to delete the language that excepts when-issued trades from NSCC's policy of guaranteeing the completion of CNS trades as of midnight of the day the trades are reported to members as compared. NSCC further proposes modifying Addendum M to include a statement of its policy of guaranteeing the completion of when-issued trades as of midnight of the day trades are reported to members as compared/recorded.

NSCC also proposes to modify Addendum K to its Rules and Procedures, Interpretation of the Board of Directors—Application of Clearing Fund, to reflect that NSCC will guarantee the completion of balance order trades as of midnight of the day such trades are reported to members as compared/recorded through the close of business of T+3, regardless of whether the member could have made delivery on T+3. Addendum K will be modified further to include a statement of its policy of guaranteeing the completion of when-issued trades as of midnight of the day the trades are reported to members as compared/recorded. NSCC also proposes to modify Addendum K to state that it will consider all when-issued trades of members as if the trades were CNS transactions for purposes of clearing fund calculations and surveillance regardless of the accounting operation in which the trades ultimately settle.

Because NSCC is guaranteeing three different types of transactions, Procedure XV, Clearing Fund Formula and Other Matters, is being modified to specifically include the calculations described above for when-issued and balance order trades. NSCC also proposes to modify Addendum B, Standards of Financial Responsibility-Operational Capability, to eliminate the use of the previous twenty business days' activity as a basis to determine whether additional clearing fund deposit must be collected when a member's clearing fund requirement for CNS activity exceeds the previous month-end requirement by a certain percentage threshold.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act,[5] and the rules and regulations thereunder because it is designed to assure the safeguarding of securities and funds in the custody or control of NSCC or for which it is responsible and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change or

[3] The Commission has modified the text of these statements.

[4] The market risk component of the CNS portion of the clearing fund formula requires that each NSCC member contribute to the clearing fund an amount approximately equal to the net of each day's difference between the contract price of pending, compared CNS trades, exclusive of trades reported by The Options Clearing Corporation (''OCC'') which are the result of options exercises and assignments, and the current market price for all guaranteed pending CNS trades, exclusive of trades reported by OCC which are the result of options exercise and assignments which have not as yet reached settlement. In addition, to protect against liquidation risk, NSCC will collect .25% of the net of all guaranteed pending CNS trades and open CNS positions. NSCC Procedure XV, Sections A.1.(a)(1)(b) AND a.1.(A)(1)(c).

[5] 15 U.S.C. 78q–1 (1988).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–96–13 and should be submitted by September 9, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21053 Filed 8–16–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37554; File Nos. SR–SCCP–96–03 and SR–Philadep–96–07]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company; Order Granting Temporary Approval of Proposed Rule Changes To Establish Separate Participant Categories for Inactive Accounts

August 9, 1996.

On May 8, 1996, the Stock Clearing Corporation of Philadelphia (''SCCP'') and the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') proposed rule changes (File Nos. SR–SCCP–96–03 and SR–Philadep–96–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposals were published in the Federal Register on May 31, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes through December 31, 1996.

I. Description of the Proposals

SCCP and Philadep are establishing separate participant categories for inactive accounts and are amending their respective participants fund formulas with respect to such inactive accounts. Pursuant to the rule changes, SCCP and Philadep are defining in their rules ''inactive account(s)'' as an account in which a participant conducts de minimis activity, which will be established as twenty or fewer trades per month for SCCP participants and less than $100 in monthly billing activities for Philadep participants. SCCP and Philadep propose to decrease the required contribution to the participants fund for inactive accounts from $10,000 to $5,000. SCCP and Philadep believe that inactive accounts pose virtually no risk to the clearing corporation or the depository as long as they remain inactive.

SCCP and Philadep have established procedures to detect a change in the status of a participant's account from inactive to active and to immediately collect additional required participants fund contributions at such time. Following the admission of a participant, SCCP and Philadep monitor participants' account activities to assure that the proper participants fund contribution is being collected.

With respect to inactive accounts, SCCP's and Philadep's Finance and Administration Departments will identify for SCCP and Philadep the specific accounts that are currently inactive. Thereafter, SCCP's Operations Department will monitor on a daily basis purchase and sale blotters for each inactive account. Trade activity detected from inactive accounts will be compiled on a separate report identifying cumulative activity in each inactive account during a monthly billing cycle.[3] In the event that activity in an inactive account exceeds ten trades but is fewer than twenty-one trades for a particular month, SCCP's Operations Department will immediately notify SCCP's Finance and Administrative Department and SCCP's compliance officer.

Similarly, Philadep's Operations Department will monitor daily deposit, transfer, and miscellaneous deliver order (''MDO'') activity of each inactive account. The Operations Department will generate a report that maintains a cumulative total of deposits, transfers, and MDOs occurring in each inactive account for each monthly billing cycle.[4] If the cumulative total exceeds forty transfers, deposits, and MDOs but is less than seventy-five for any inactive account in any given month, Philadep's Operations Department will immediately notify Philadep's Finance and Administration Department and Philadep's compliance officer.[5]

Once a SCCP or Philadep inactive participant exceeds the respective thresholds described above, the respective Finance and Administration Departments will verify the activity, immediately call the participant, and send a letter to the participant requesting that the participant wire additional funds to meet the new required participants fund contribution associated with an active account. In order for the participant to conduct further account activity, the required funds must be wired to SCCP or Philadep (depending on whether the inactive account is at SCCP or Philadep) by the next business day. If the participant does not wire the required participants fund contributions by the next business day, the participant's account will be suspended on the business day after the additional contribution was due to prevent any further activity in the account. A participant's failure to timely wire the required participants fund contributions also will subject the participant to a $500 fine for the first offense and a $2,000 fine for the second offense during a calendar year.[6]

When an inactive account becomes active, the account will be subject to the normal monthly review and update process, and the respective Finance and Administration Departments will recalculate each participant's required deposit using the applicable participants fund formulas.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Releases No. 37244 (May 24, 1996), 61 FR 27377 and 37245 (May 24, 1996), 61 FR 27379.

[3] This report will be distributed on a daily basis to SCCP management and SCCP's compliance officer.

[4] This report will be distributed on a daily basis to Philadep management and Philadep's compliance officer.

[5] The seventy-five transaction threshold serves as a reliable proxy to determine when a participant's account has incurred $100 of billing activity. Pursuant to Philadep's fee schedule, the most expensive activity among deposits, transfers, and MDOs multiplied by 75 typically generates less than $100 in monthly billings.

[6] An offense refers to the number of times that the account was suspended from conducting any further business for failure to furnish SCCP or Philadep with the required participants fund contribution.

[6] 17 CFR 200.30–3(a)(12) (1995).

agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[7] The Commission believes the proposed rule changes are consistent with SCCP's and Philadep's obligations under Section 17A(b)(3)(F) because the proposals establish separate participant categories designed for participants that conduct limited activity while providing procedures that identify and monitor the activity in those participant accounts to assure that the activity remains limited.

On February 22, 1996, the Commission temporarily approved through August 31, 1996, portions of SCCP's and Philadep's proposed rule changes to implement their conversion to a same-day funds settlement system.[8] The Commission granted temporary approval to components of SCCP's and Philadep's proposed rule changes relating to their participants fund formulas because Commission staff was concerned about the adequacy of SCCP's and Philadep's participants fund formulas to provide a sufficient source of cash liquidity. The Commission continues to be concerned about the liquidity provided by SCCP's and Philadep's formulas and believes that lowering the required deposits on any category of participants may inhibit SCCP's and Philadep's ability to protect themselves and their participants from settlement failures and participant defaults.

In addition to establishing new categories and participants fund requirements for inactive participants, SCCP and Philadep are establishing new surveillance procedures to monitor inactive participants' accounts to ensure that inactive participants are not able to conduct levels of activity above the inactive account thresholds without depositing additional funds. Therefore, the Commission believes that it is appropriate to grant temporary approval of the proposals in order that the Commission, SCCP, and Philadep have the opportunity to review and monitor SCCP's and Philadep's administration of these new categories of participants and the effectiveness of the surveillance procedures established under these proposed rule changes before the proposal receives permanent approval. Therefore, the Commission is temporarily approving the proposed rule change through December 31, 1996.

During the period of temporary approval, the Commission will continue to monitor and to analyze the adequacy of the participants fund formulas associated with inactive accounts. In this regard, the Commission requests that SCCP and Philadep submit on a monthly basis reports detailing the number of inactive participants, the value of their participants fund deposits, the total activity in each inactive account for the prior month, and the steps taken in the event that an inactive participant became active.

III. Conclusion

On the basis of the foregoing the Commission finds that the proposals are consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–SCCP–96–03 and SR–Philadep–96–07) be, and hereby are, temporarily approved through December 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21052 Filed 8–16–96; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] Securities Exchange Act Release Nos. 36857 (February 22, 1996), 61 FR 7846 [SR–SCCP–95–06] and 36876 (February 22, 1996), 61 FR 7841 [SR–Philadep–95–08] (orders granting partial temporary approval and partial permanent approval of proposed rule changes).

[9] 17 CFR 200.30–3(a)(12) (1995).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection listed below, which was published in the Federal Register on June 14, 1996, has been submitted to OMB.

(Call Reports Clearance Officer on (410) 965–4125 for copies of package)

OMB Desk Officer: Laura Oliven.

SSA Reports Clearance Officer: Judith T. Hasche.

Customer Satisfaction Survey Questionnaires—0960–0521. The Social Security Administration will conduct surveys to measure the public's perception of the quality of SSA's services, to determine public expectations and preferences for service delivery. The information collected on the survey forms (SSA–3299, SSA–4000, SSA–4298 and SSA–4299) will be used to identify areas of needed improvement and initiate corrective action. The respondents are beneficiaries entitled to old age, survivors or disability benefits (title II) and supplement security income (title XVI) recipients; individuals whose applications under either title were denied; and applicants for Social Security number cards.

	SSA–4000 SSA–4298/ 4299	SSA–3299
Number of Respondents:.	9,000 (total)	1,500.
Frequency of Response:.	1	1.
Average Burden Per Response:.	15 minutes ...	10 minutes.
Estimated Annual Burden:.	2,250 hours	250 hours.

Written comments and recommendations regarding this information collection(s) should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, Washington, DC 20503

(SSA) Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: August 8, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–20907 Filed 8–16–96; 8:45 am]

BILLING CODE 4190–29–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1487).

TIME AND DATE: 9 a.m. (EDT), August 21, 1996.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on July 11, 1996.

New Business

Discussion Item

Preliminary Rate Review.

C—Energy

C1. Extension of program offering incentives to employees and retirees to purchase efficient electric appliances.

E—Real Property Transactions

E1. Sale of a permanent easement to Jake Beeler affecting approximately 0.11 acre of land on Norris Lake, Claiborne County, Tennessee (Tract no. XNR–902H).

E2. Conveyance of a permanent easement affecting approximately 0.76 acre of land on Fort Loudon Lake in Loudon County, Tennessee (Tract No. XFL–128H), in exchange for the abandonment of an existing road easement affecting approximately 1.05 acres of land (Tract No. XFL–117H).

E3. Grant of a 25-year recreation easement to the City of Soddy-Daisy, Tennessee, affecting approximately 27 acres of land on Chickamauga Lake, Hamilton County, Tennessee (Tract No. XTCR–190RE).

E4. Abandonment of a right-of-way easement affecting approximately 1.5 acres on the Tupelo-Pontotoc 161-kV Transmission Line (Tract No. TP–37).

F—Unclassified

F1. TVA contribution to the TVA Retirement System for Fiscal Year 1997—Retirement System Annual Report.

Information Items

1. Change No. 28 to Contract No. 90BYB–93697C with Oracle Corporation to increase the contract by up to $8 million.

2. Revision to ''Term of Contract'' section of wholesale power contracts with distributors.

3. Deed modification affecting approximately 3.2 acres of former TVA land on Chickamauga Lake, Hamilton County, Tennessee (Tract No. XCR–44).

4. Delegation of authority to the Chief Financial Officer regarding establishment and implementation of decommissioning trust agreements.

5. Acquisition of engineering data from Bristol, Tennessee, on the Bluff City Substation to be used to support TVA's efforts to finalize a strategic alliance with ABB Power T&D Company to develop and market a new loss-loss transformer.

6. Deed modification affecting approximately 39 acres of former TVA land on Norris Lake, Union County, Tennessee (Tract No. XNR–589).

7. Distributor power contract arrangements in connection with the Mississippi Lignite Project.

8. Delegation of authority to enter into a licensing agreement with Apace Research Limited for the commercialization of certain intellectual property relating to ethanol production.

9. Abandonment of easement rights affecting approximately 3.7 acres over a portion of the Pulaski-Fayetteville Transmission Line in Giles County, Tennessee (Tract Nos. PF–26 and –27).

10. Sale of permanent easement to the State of Tennessee for highway purposes affecting approximately 0.37 acres of TVA's Singleton property in Blount County, Tennessee (Tract No. XFL–127H).

11. Abandonment of transmission line right-of-way affecting approximately 4.1 acres over a portion of the Pickwick Dam-Memphis Transmission Line in Shelby County, Tennessee (Tract No. PM–249).

12. Filing of condemnation cases.

13. Grant of a 30-year easement to the City of Harriman, Tennessee, affecting approximately 2.7 acres of Kingston Fossil Plant property in Roane County, Tennessee (Tract No. XESPRR–6P).

14. Amendments to resolutions adopted on October 24, 1995, relating to the sale of Tennessee Valley Authority Power Bonds.

15. New Business Practice entitled, ''The Acquisition of Fossil Fuels and Related Transportation.''

16. Release of $3 million of the remaining $4.8 million yet to be released under Contract 93BYH–93383E with I-Net Incorporated for installation and support of TVA's Corporate Information Network.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: August 14, 1996.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 96–21138 Filed 8–15–96; 9:53 am]

BILLING CODE 8120–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

August 14, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, 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) 927–6703. 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).

The current limits for certain categories are being increased for swing.

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 65292, published on December 19, 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 bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 14, 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 December 13, 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 textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on August 15, 1996, you are directed to increase the limits for the following categories, as provided under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	688,517 kilograms.
218	11,422,261 square meters.
226	10,752,190 square meters.
237	1,849,586 dozen.
239	2,900,902 kilograms.
313	43,277,798 square meters.
314	49,921,437 square meters.
317/326	20,730,567 square meters of which not more than 3,966,165 square meters shall be in Category 326.
331	5,105,017 dozen pairs.
334	320,732 dozen.
335	393,784 dozen.

Category	Adjusted twelve-month limit [1]
336	161,619 dozen.
338/339	2,488,916 dozen of which not more than 1,889,360 dozen shall be in Categories 338–S/339–S [2].
340	857,396 dozen of which not more than 428,698 dozen shall be in Category 340–Z [3].
341	685,225 dozen of which not more than 411,135 dozen shall be in Category 341–Y [4].
342	269,033 dozen.
345	134,673 dozen.
347/348	2,524,883 dozen.
350	162,075 dozen.
351	526,032 dozen.
352	1,891,222 dozen.
359–C [5]	587,656 kilograms.
359–V [6]	855,909 kilograms.
360	7,535,065 numbers of which not more than 5,139,642 numbers shall be in Category 360–P [7].
361	4,213,614 numbers.
362	7,337,644 numbers.
363	31,476,703 numbers.
369–D [8]	4,704,946 kilograms.
369–L [9]	3,224,379 kilograms.
410	2,056,660 square meters of which not more than 1,648,635 square meters shall be in Category 410–A [10] and not more than 1,648,635 square meters shall be in Category 410–B [11].
433	23,964 dozen.
434	13,654 dozen.
435	25,079 dozen.
436	15,605 dozen.
438	27,307 dozen.
440	39,013 dozen of which not more than 22,293 dozen shall be in Category 440–M [12].
442	43,471 dozen.
443	140,442 numbers.
444	210,873 numbers.
445/446	298,557 dozen.
447	81,163 dozen.
448	22,815 dozen.
611	5,453,381 square meters.
613	7,485,032 square meters.
614	11,762,192 square meters.
615	24,486,747 square meters.
617	17,108,642 square meters.
631	1,243,637 dozen pairs.
633	56,171 dozen.
634	611,100 dozen.
635	638,346 dozen.
636	552,040 dozen.
638/639	2,483,433 dozen.
640	1,509,764 dozen.
641	1,358,679 dozen.
642	315,466 dozen.
643	509,441 numbers.
644/844	3,648,012 numbers.
645/646	861,155 dozen.
647	1,584,997 dozen.
648	1,132,470 dozen.
649	920,239 dozen.
650	114,572 dozen.
651	773,249 dozen of which not more than 136,136 dozen shall be in Category 651–B [13].
652	2,638,739 dozen.
659–C [14]	409,367 kilograms.
659–H [15]	2,817,627 kilograms.
659–S [16]	609,305 kilograms.
666	3,545,389 kilograms.
669–P [17]	1,988,787 kilograms.
670–L [18]	15,828,611 kilograms.
831	528,552 dozen pairs.
833	27,653 dozen.
835	125,014 dozen.
836	277,228 dozen.
840	486,309 dozen.
842	268,572 dozen.
846	173,839 dozen.
847	1,283,745 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[4] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[5] 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.

[6] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[7] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[8] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[9] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[10] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[11] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[12] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[13] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[14] 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.

[15] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[16] 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.

[17] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[18] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

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. 96–21025 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in the Arab Republic of Egypt

August 13, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. 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); the Uruguay Round Agreements Act.

The current limit for Category 448 is being increased for 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 62401, 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

August 13, 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 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on August 14, 1996, you are directed to increase the limit for Category 448 to 19,734 dozen [1], as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of 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. 96–21027 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Korea

August 14, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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 of each Customs port or call (202) 927–6707. 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 reduced for carryforward used during 1995.

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 62408, 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

August 14, 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 29, 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 Korea and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on August 15, 1996, you are directed to reduce 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]
Sublevel within Group I	
619/620	92,043,624 square meters.
Sublevel within Group II	
342/642	207,675 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

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.96–21024 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1995.

Amendment of Export Visa Requirements for Certain Man-Made Fiber Apparel Products Produced or Manufactured in the Republic of Maldives

August 13, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: September 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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).

In 1983, the Governments of the United States and the Republic of Maldives agreed to amend their Visa Arrangement, effected by exchange of letters dated December 29, 1981 and March 22, 1982, to require the use of a standard nine-digit visa number, beginning with the year of quota.

Effective on September 1, 1996, all export visas issued by the Republic of Maldives for cotton, wool and man-made fiber apparel products in Categories 237, 239, 330–359, 431–459 and 630–659, produced or manufactured in Maldives and exported from Maldives on and after September 1, 1996, must contain the nine-digit visa number, beginning with the last digit of the year of export rather than the year of quota. During the period September 1, 1996 through September 30, 1996, U.S. Customs will accept either the new or the old visa number format. Goods exported on and after October 1, 1996 shall be denied entry if not accompanied by an appropriate export visa, beginning with the correct year of export.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the visa requirements to require the use of the standard nine-digit visa number, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code and a six digit numeric serial number identifying the shipment; e.g., 6MV123456.

See 47 FR 36879, published on August 24, 1992.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 13, 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 August 18, 1982, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool and man-made fiber apparel, produced or manufactured in Maldives which were not properly visaed by the Government of the Republic of Maldives.

Effective on September 1, 1996, all export visas issued by the Republic of Maldives for cotton, wool and man-made fiber apparel in Categories 237, 239, 330–359, 431–459 and 630–659, produced or manufactured in Maldives and exported from Maldives on and after September 1, 1996, must contain the nine-digit visa number, beginning with the last digit of the year of export rather than the year of quota. During the period September 1, 1996 through September 30, 1996, you are directed to accept either the new or the old visa number format. Goods exported on and after October 1, 1996 must be accompanied by a visa which contains the standard nine-digit visa number, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code and a six digit numeric serial number identifying the shipment; e.g., 6MV123456.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls 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. 96–21028 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

August 13, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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) 927–6718. 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 carryover, carryforward and swing.

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 57576, published on November 16, 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

August 13, 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 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on August 14, 1996, you are directed to adjust the limits for the following categories, as provided for in the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Fabric Group	
219, 313, 314, 315, 317, 326, 617, 625/626/627/628/629, as a group.	151,814,522 square meters of which not more than 38,364,655 square meters shall be in Category 219; 46,890,133 square meters shall be in Category 313; 27,281,532 square meters shall be in Category 314; 36,659,560 square meters shall be in Category 315; 38,364,655 square meters shall be in Category 317; 4,262,739 square meters shall be in Category 326; 25,576,438 square meters shall be in Category 617.
Sublevel in Fabric Group	
625/626/627/628/629	17,270,491 square meters of which not more than 7,032,668 square meters shall be in Category 625; 6,908,196 square meters shall be in Category 626; 6,908,196 square meters shall be in Category 627; 6,908,196 square meters shall be in Category 628; and 6,908,196 square meters shall be in Category 629.
Limit not in a group	
200	1,618,753 kilograms.
300/301	7,881,594 kilograms.
335	340,303 dozen.
336/636	801,602 dozen.
338/339/638/639	5,081,043 dozen of which not more than 3,671,334 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].
340/640	1,572,232 dozen of which not more than 447,164 dozen shall be in Categories 340–Y/640–Y [3].
341/641	1,552,652 dozen of which not more than 543,428 dozen shall be in Categories 341–Y/641–Y [4].
342/642	892,350 dozen.
347/348	5,161,161 dozen of which not more than 1,795,275 dozen shall be in Categories 347–T/348–T [5].
350	489,641 dozen.
351/651	782,852 dozen.
352/652	2,588,520 dozen.
361	1,808,819 numbers.
369–S [6]	1,869,975 kilograms.
410/624	1,269,007 square meters of which not more than 786,329 square meters shall be in Category 410.
448	40,961 dozen.
604	2,030,452 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[3] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[4] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[5] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[6] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of 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. 96–21026 Filed 8–16–96; 8:45 am]

BILLING CODE 3510–DR–F

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Globalization of the Specialty Sugar Tariff-Rate Quota; Determination That Organic Refined Sugar is a Specialty Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations.

SUMMARY: The Acting United States Trade Representative (USTR) has determined that the in-quota quantity of the tariff-rate quota for imported specialty sugars (1,656 metric tons) will be available on a globalized basis for the remainder of the quota period ending September 30, 1996, and that organic refined sugar is a specialty sugar.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Audrae Erickson, Senior Economist, Office of Agricultural Affairs (202–395–6127), Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

SUPPLEMENTARY INFORMATION: As specified in Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of refined sugar (sugars, syrups and molasses provided for under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). The Secretary of Agriculture established the in-quota quantity of the tariff-rate quota for refined sugar for the period October 1, 1995–September 30, 1996, at 22,000 metric tons, raw value, and reserved 1,656 metric tons, raw value, of this amount for the importation of specialty sugars. (60 FR 42142.)

Section 404(d)(3) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the USTR in Proclamation 6763, of December 23, 1994. (60 FR 1007).

Section 2011.202 (15 CFR Part 2011), defines specialty sugar to include ''other sugars, as determined by the United States Trade Representative, that would be considered specialty sugar products within the normal commerce of the United States.''

Pursuant to section 2011.202, the USTR has determined that organic refined sugar is a specialty sugar within the normal commerce of the United States. Moreover, pursuant to section 404(d)(3) of the URAA, the USTR has

determined that the in-quota quantity of the tariff-rate quota for specialty sugars will be globalized for the remainder of the quota period ending September 30, 1996.

Jennifer Hillman,

General Counsel.

[FR Doc. 96–21019 Filed 8–16–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–040]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Two subcommittees of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss various issues relating to vessel safety in the fishing industry. They are the Subcommittee on Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels by Utilizing the Application of Prevention Through People (PTP) Principles and the Subcommittee on Stability Standards for Commercial Fishing Industry Vessels. The meetings are open to the public.

DATES: The meetings of the subcommittees of CFIVAC will be held on Thursday and Friday, September 12 and 13, 1996, from 8:30 a.m. to 4 p.m. daily. Written material and requests to make oral presentations should reach the Coast Guard on or before September 6, 1996.

ADDRESSES: The meeting of the Subcommittee on Voluntary Standards Utilizing PTP will be held in room 1303, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting of the Subcommittee on Stability Standards will be held in room 1103 at the same address. Written material and requests to make oral presentations should be sent to Commander Adan D. Guerrero, Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Adan D. Guerrero, Executive Director of CFIVAC, or Commander Mark D. Bobal, Assistant to the Executive Director, telephone (202) 267–1181, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Subcommittee on Voluntary Standards Utilizing PTP (Prevention Through People). The agenda includes the following:

(1) Review Voluntary Standards of Uninspected Commercial Fishing Vessels found in Navigation and Vessel Inspection Circular (NVIC 5–86) to ascertain which standards should be continued as voluntary in light of the regulations in 46 CFR part 28.

(2) Assist the commercial fishing community by developing voluntary standards which minimize casualties and injuries through application of the principles of PTP.

(3) Review possible methods to develop these voluntary standards.

Subcommittee on Stability Standards. The agenda includes the following:

(1) Review existing stability standards for Uninspected Commercial Fishing Vessels less than 79 feet in length.

(2) Review possible stability standards to increase the safe operation of these vessels.

Procedural

Both meetings are open to the public. At the Sub-Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meetings should notify the Executive Director no later than September 6, 1996. Written material for distribution at a meeting should reach the Coast Guard no later than September 6, 1996. If a person submitting material would like a copy distributed to each member of a subcommittee in advance of a meeting, that person should submit 20 copies to the Executive Director no later than August 30, 1996.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request that assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 7, 1996.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–21089 Filed 8–16–96; 8:45 am]

BILLING CODE 4910–14–M

Surface Transportation Board [1]

[STB Finance Docket No. 33005]

CWRR, Inc.—Acquisition and Operation Exemption—Mendocino Coast Railway, Inc., d/b/a California Western Railroad

CWRR, Inc., a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 40 miles of rail line and other assets of Mendocino Coast Railway, Inc., doing business as California Western Railroad, a wholly owned subsidiary of Kyle Railways, Inc., between Fort Bragg, CA, and Willits, CA. Consummation was expected to occur on or after August 9, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33005, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423 and served on: Sean J. Hogan, P.O. Box 1286, 811 N. Main Street, Fort Bragg, CA 95437.

Decided: August 12, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–21041 Filed 8–16–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket Nos. AB–451X and AB–55 (Sub-No. 518X)]

Sequatchie Valley Railroad Co., Inc.—Discontinuance of Service Exemption—in Marion and Sequatchie Counties, TN; and CSX Transportation, Inc.—Abandonment Exemption—in Marion and Sequatchie Counties, TN

AGENCY: Surface Transportation Board.[1]

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice

ACTION: Notice of exemption.

SUMMARY: The Board, pursuant to 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10903: (1) Sequatchie Valley Railroad Co., Inc.'s (SQVR) discontinuance of service over 28.9 miles of rail line between milepost LJF–11.0 near Kimball and milepost LJF–39.9 at Brush Creek, in Marion and Sequatchie Counties, TN; and (2) CSX Transportation, Inc.'s (CSXT) abandonment of the 28.9-mile rail line, subject to standard labor protective conditions and an environmental condition.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on September 18, 1996. Formal expressions of intent to file financial assistance offers [2] under 49 CFR 1152.27(c)(2) and requests for a notice of interim trail use/rail banking must be filed by August 29, 1996. Petitions to stay must be filed by September 3, 1996. Requests for a public use condition must be filed by September 9, 1996. Petitions to reopen must be filed by September 13, 1996.

ADDRESSES: Send pleadings referring to STB Docket Nos. AB–451X and AB–55 (Sub-No. 518X) to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioners' representatives: G. R. Abernathy, P.O. Box 1317, Shelbyville, TN 37160, and Charles M. Rosenberger, 500 Water Street–J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 7, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–21040 Filed 8–16–96; 8:45 am]

BILLING CODE 4915–00–P

relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–PC

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 1120–PC, U.S. Property and Casualty Insurance Company Income Tax Return.

DATES: Written comments should be received on or before October 18, 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: U.S. Property and Casualty Insurance Company Income Tax Return.

OMB Number: 1545–1027.

Form Number: 1120–PC.

Abstract: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.

Current Actions: The major changes to Form 1120–PC are as follows:

(1) On line 7c, the checkboxes for Form 5884 (Jobs Credit) and Form 6765 (Credit for Increasing Research Activities) were removed. The jobs credit under Internal Revenue Code section 51 has expired for employees who began work after 1994. The research credit under Code section 41 expired June 30, 1995.

(2) Line 11b, Environmental tax, was deleted because the environmental tax does not apply to tax years beginning after 1995.

(3) Schedule C, column (a), Dividends not subject to section 832(b)(5)(B), was removed because the entries under this column are not needed.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,200.

Estimated Time Per Respondent: 203 hr., 31 min.

Estimated Total Annual Burden Hours: 447,722.

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: August 7, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–21086 Filed 8–16–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

As required by the Federal Advisory Committee Act, the VA hereby gives notice that the Special Medical Advisory Group has scheduled a

meeting on September 4, 1996. The meeting will convene at 8:30 a.m. and end at about 4:00 p.m. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, NW, Washington, DC. The purpose of the meeting is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussion of VA's special programs, the VHA budget, organization for care delivery within the Veterans Integrated Service Networks and outcome reports from residency and research realignment committees.

All sessions will be open to the public. Those wishing to attend should contact Brenda Goodworth, Office of the Under Secretary for Health, Department of Veterans Affairs. Her phone number is (202) 273–5878.

By Direction of the Secretary.

Eugene A. Brickhouse,

Committee Management Officer.

[FR Doc. 96–21015 Filed 8–16–96; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 161
Monday, August 19, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AS-AZ-CA-HW-NV-000-0001; FRL-5541-8]

Correction of Implementation Plans; American Samoa, Arizona, California, Hawaii, and Nevada State Implementation Plans

Correction

In proposed rule document 96–18834 beginning on page 38664 in the issue of Thursday, July 25, 1996, make the following correction:

On page 38674, in the table, in the third column, after the sixth line, insert the heading ''Monterey Bay Unified APCD''.

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–4087–N–01]

RIN 2577–AB68

Office of the Assistant Secretary for Public and Indian Housing; Strengthening the Role of Fathers in Public Housing Families, Advance Notice of Proposed Rulemaking

Correction

In proposed rule document 96–19238 beginning on page 39812 in the issue of Tuesday, July 30, 1996, make the following correction:

On page 39813, in the second column, in paragraph numbered 3., in the fifth line, ''treat'' should read ''threat''.

BILLING CODE 1505–01–D

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 719, 722, and 752

[AIDAR Notice 96–1]

RIN 0412–AA29

Miscellaneous Amendments to Acquisition Regulations

Correction

In rule document 96–18495 beginning on page 39089 in the issue of Friday, July 26, 1996, make the following corrections:

719.271–3 [Corrected]

1. On page 39092, in the second column, the section heading, ''718.271–3 [Amended]'' should read ''719.271–3 [Amended]''.

722.103–70 [Corrected]

2. On the same page, in the same column, in amendatory instruction 26 to section 722.103–70, in the third line, ''722.103.–1'' should read ''722.103–1''.

722.805–70 [Corrected]

3. On the same page, in the third column, in section 722.805–70(b)(1)(i), in the second line, ''contract'' should read ''contact''.

4. On the same page, in the same column, in section 722.805–70(b)(1)(iii), in the last line, insert ''in'' after ''organizations''.

752.7028 [Corrected]

5. On page 39096, in the second column, in amendatory instruction 58 to section 752.7028, in the eighth line, ''sentence'' should read ''sentences''.

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206-AG88

Pay Under the General Schedule; Locality Pay Areas for 1997

Correction

In rule document 96–20092 beginning on page 40949 in the issue of Wednesday, August 7, 1996 make the following corrections:

(1) On page 40950, in the first column, under Authority, eight lines from the bottom ''5305(b)(1)'' should read ''5305(g)(1).

§ 561.603 [Corrected]

(2) On the same page, in the second column,in § 531.603(b)(21), in the first line ''Pittsburgh'' was misspelled.

BILLING CODE 1505–01–D

Federal Register

Monday
August 19, 1996

Part II

Department of Agriculture

Rural Housing Service

7 CFR Part 1944

Department of Housing and Urban Development

24 CFR Part 700

Congregate Housing Services Program: Streamlining; Final Common Rule

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1944

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 700
[Docket No. FR–4033–F–01]

RIN 2501–AC21

Congregate Housing Services Program: Streamlining; Final Rule

AGENCY: Rural Housing Service, (USDA), and Office of the Secretary, HUD.

ACTION: Final common rule.

SUMMARY: This document amends the joint USDA and HUD regulations for the Congregate Housing Services Program (CHSP or Program). In an effort to comply with the President's regulatory reform initiatives, this rule will streamline CHSP regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary. This final rule will make CHSP regulations clearer and more concise.

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT: With respect to HUD's Congregate Housing Services Program: Carissa Janis, Program Analyst, Room 6176, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–3291 (this is not a toll-free number). With respect to the Rural Housing Service's Congregate Housing Services Program: Sue M. Harris-Green, Senior Loan Officer, Rural Housing Service, Department of Agriculture, 14th and Independence Avenue, S.W., room 5343, Washington, D.C., 20250, telephone number (202) 720–1660. Hearing- and speech-impaired persons may access these telephone numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD and USDA have determined that the regulations for CHSP can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the National Affordable Housing Act (NAHA) of 1990 and the Housing and Community Development Act of 1992. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD and USDA must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference. Readers of 24 CFR part 700 must have copies of the appropriate sections of both Acts readily available in order to effectively read and understand this regulation.

Several other provisions in the regulations apply to more than one program, and therefore HUD repeated these provisions in different subparts. This repetition is unnecessary, and updating these provisions is cumbersome and often creates confusion. Therefore, this final rule will consolidate these duplicative provisions, maintaining appropriate cross-references for the reader's convenience.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD and USDA find that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Other Matters

Regulatory Flexibility Act

The Secretary concerned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, established 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, the agencies 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. When such a statement is needed for a rule, section 205 of the UMRA generally requires the agencies 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 regulatory provisions of Title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing CHSP. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program''. It is the determination of the RHS that the proposed action does not constitute a major Federal order 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.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD or USDA policies or programs will result from promulgation of this rule.

Text of Final Common Rule

The text of the final common rule, as adopted by the agencies in this document, appears below:

PART _____—CONGREGATE HOUSING SERVICES PROGRAM

Sec.

$_____.100 Purpose.

The requirements of this part augment the requirements of section 802 of the National Affordable Housing Act of 1990 (approved November 28, 1990, Public Law 101–625) (42 U.S.C. 8011), (hereinafter, section 802), as amended by the Housing and Community Development Act of 1992 (Public Law 102–550, approved October 28, 1992), which authorizes the Congregate Housing Services Program (hereinafter, CHSP or Program).

§ _____.105 Definitions.

In addition to the definitions in section 802(k), the following definitions apply to CHSP:

Activity of Daily Living (ADL) means an activity regularly necessary for personal care. (1) The minimum requirements of ADLs include:

(i) Eating (may need assistance with cooking, preparing or serving food, but must be able to feed self);

(ii) Dressing (must be able to dress self, but may need occasional assistance);

(iii) Bathing (may need assistance in getting in and out of the shower or tub, but must be able to wash self);

(iv) Grooming (may need assistance in washing hair, but must be able to take care of personal appearance);

(v) Getting in and out of bed and chairs, walking, going outdoors, using the toilet; and

(vi) Household management activities (may need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.)

(2) Each of the Activities of Daily Living noted in paragraph (1) of this definition includes a requirement that a person must be able to perform at a specified minimal level (*e.g.*, to satisfy the eating ADL, the person must be able to feed himself or herself). The determination of whether a person meets this minimal level of performance must include consideration of those services that will be performed by a person's spouse, relatives or other attendants to be provided by the individual. For example, if a person requires assistance with cooking, preparing or serving food plus assistance in feeding himself or herself, the individual would meet the minimal performance level and thus satisfy the eating ADL, if a spouse, relative or attendant provides assistance with feeding the person. Should such assistance become unavailable at any time, the owner is not obligated at any time to provide individualized services beyond those offered to the resident population in general. The Activities of Daily Living analysis is relevant only with regard to determination of a person's eligibility to receive *supportive services* paid for by CHSP and is not a determination of eligibility for occupancy;

Adjusted income means adjusted income as defined in 24 CFR parts 813 or 913.

Applicant means a State, Indian tribe, unit of general local government, public housing authority (PHA), Indian housing authority (IHA) or local nonprofit housing sponsor. A State, Indian tribe, or unit of general local government may apply on behalf of a local nonprofit housing sponsor or a for-profit owner of eligible housing for the elderly.

Area agency on aging means the single agency designated by the State Agency on Aging to administer the program described in Title III of the Older Americans Act of 1965 (45 CFR chapter 13).

Assistant Secretary means the HUD Assistant Secretary for Housing-Federal Housing Commissioner or the HUD Assistant Secretary for Public and Indian Housing.

Case management means implementing the processes of: establishing linkages with appropriate agencies and service providers in the general community in order to tailor the needed services to the program participant; linking program participants to providers of services that the participant needs; making decisions about the way resources are allocated to an individual on the basis of needs; developing and monitoring of case plans in coordination with a formal assessment of services needed; and educating participants on issues, including, but not limited to, supportive service availability, application procedures and client rights.

Eligible housing for the elderly means any eligible project including any building within a mixed-use project that was designated for occupancy by elderly persons, or persons with disabilities at its inception or, although not so designated, for which the eligible owner or grantee gives preference in tenant selection (with HUD approval) for all units in the eligible project (or for a building within an eligible mixed-use project) to eligible elderly persons, persons with disabilities, or temporarily disabled individuals. For purposes of this part, this term does not include projects assisted under the Low-Rent Housing Homeownership Opportunity program (Turnkey III (24 CFR part 905, subpart G)).

Eligible owner means an owner of an eligible housing project.

Excess residual receipts mean residual receipts of more than $500 per unit in the project which are available and not committed to other uses at the time of application to HUD for CHSP. Such receipts may be used as matching funds and may be spent down to a minimum of $500/unit.

For-profit owner of eligible housing for the elderly means an owner of an eligible housing project in which some part of the project's earnings lawfully inure to the benefit of any private shareholder or individual.

Grantee or *Grant recipient* means the recipient of funding under CHSP. Grantees under this Program may be states, units of general local government, Indian tribes, PHAs, IHAs, and local nonprofit housing sponsors.

Local nonprofit housing sponsor means an owner or borrower of eligible housing for the elderly; no part of the net earnings of the owning organization shall lawfully inure to the benefit of any shareholder or individual.

Nonprofit includes a public housing agency as that term is defined in section 3(b)(6) of the United States Housing Act of 1937.

Person with disabilities means a household composed of one or more persons, at least one of whom is an adult who has a disability. (1) A person shall be considered to have a disability if such person is determined under regulations issued by the Secretary to have a physical, mental, or emotional impairment which:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the person's ability could be improved by more suitable housing conditions.

(2) A person shall also be considered to have a disability if the person has a developmental disability as defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–7). Notwithstanding the preceding provisions of this paragraph, the terms ''person with disabilities'' or ''temporarily disabled'' include two or more persons with disabilities living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary of HUD) to be essential to their care or well-being, and the surviving member or members of any household where at least one or more persons was an adult with a disability who was living, in a unit assisted under this section, with the deceased member of the household at the time of his or her death.

Program participant (participant) means any project resident as defined in section 802(e)(1) who is formally accepted into CHSP, receives CHSP services, and resides in the eligible housing project served by CHSP grant.

Qualifying supportive services means those services described in section 802(k)(16). Under this Program, ''health-related services'' mean non-medical supervision, wellness programs, preventive health screening, monitoring of medication consistent with state law, and non-medical components of adult day care. The Secretary concerned may also approve other requested supportive services essential for achieving and maintaining independent living.

Rural Housing Service (RHS) means a credit agency for rural housing and rural development in the U.S. Department of Agriculture (USDA).

Secretary concerned means (1) The Secretary of Housing and Urban Development, with respect to eligible federally assisted housing administered by HUD; and

(2) The Secretary of Agriculture with reference to programs administered by the Administrator of the Rural Housing Service.

Service coordinator means CHSP staff person responsible for coordinating Program services as described in section _____.130.

Service provider means a person or organization licensed or otherwise approved in writing by a State or local agency (*e.g.,* Department of Health, Department of Human Services or Welfare) to provide supportive services.

State agency means the State or an agency or instrumentality of the State.

State agency on aging means the single agency designated by the Governor to administer the program described in Title III of the Older Americans Act of 1965 (See 45 CFR part 13).

§ _____.110 Notice of funding availability, application process and selection.

(a) *Notice of funding availability.* A Notice of Funding Availability (NOFA) will be published periodically in the Federal Register by the Secretary concerned containing the amounts of funds available, allocation or distribution of funds available among eligible applicant groups, where to obtain and submit applications, the deadline for submissions, and further explanation of the selection criteria, review and selection process. The Secretary concerned will designate the maximum allowable size for grants.

(b) *Selection criteria* are set forth in section 802(h)(1) and shall include additional criteria specified by the Secretary concerned.

§ _____.115 Program costs.

(a) *Allowable costs.* (1) Allowable costs for direct provision of supportive services includes the provision of supportive services and others approved by the Secretary concerned for:

(i) Direct hiring of staff, including a service coordinator;

(ii) Supportive service contracts with third parties;

(iii) Equipment and supplies (including food) necessary to provide services;

(iv) Operational costs of a transportation service (*e.g.,* mileage, insurance, gasoline and maintenance, driver wages, taxi or bus vouchers);

(v) Purchase or leasing of vehicles;

(vi) Direct and indirect administrative expenses for administrative costs such as annual fiscal review and audit, telephones, postage, travel, professional education, furniture and equipment, and costs associated with self evaluation or assessment (not to exceed one percent of the total budget for the activities approved); and

(vii) States, Indian tribes and units of general local government with more than one project included in the grant may receive up to 1% of the total cost of the grant for monitoring the projects.

(2) Allowable costs shall be reasonable, necessary and recognized as expenditures in compliance with OMB Cost Policies, i.e., OMB Circular A–87, 24 CFR 85.36, and OMB Circular A–128.

(b) *Nonallowable costs.* (1) CHSP funds may not be used to cover expenses related to any grantee program, service, or activity existing at the time of application to CHSP.

(2) Examples of nonallowable costs under the program are:

(i) Capital funding (such as purchase of buildings, related facilities or land and certain major kitchen items such as stoves, refrigerators, freezers, dishwashers, trash compactors or sinks);

(ii) Administrative costs that represent a non-proportional share of costs charged to the Congregate Housing Services Program for rent or lease, utilities, staff time;

(iii) Cost of supportive services other than those approved by the Secretary concerned;

(iv) Modernization, renovation or new construction of a building or facility, including kitchens;

(v) Any costs related to the development of the application and plan of operations before the effective date of CHSP grant award;

(vi) Emergency medical services and ongoing and regular care from doctors

and nurses, including but not limited to administering medication, purchase of medical supplies, equipment and medications, overnight nursing services, and other institutional forms of service, care or support;

(vii) Occupational therapy and vocational rehabilitation services; or

(viii) Other items defined as unallowable costs elsewhere in this part, in CHSP grant agreement, and OMB Circular A–87 or 122.

(c) *Administrative cost limitation.* Grantees are subject to the limitation in section 802(j)(4).

§ _____.120 Eligible supportive services.

(a) Supportive services or funding for such services may be provided by state, local, public or private providers and CHSP funds. A CHSP under this section shall provide meal and other qualifying services for program participants (and other residents and nonresidents, as described in § _____ .125(a)) that are coordinated on site.

(b) Qualifying supportive services are those listed in section 802(k)(16) and in section _____ .105.

(c) Meal services shall meet the following guidelines:

(1) *Type of service.* At least one meal a day must be served in a group setting for some or all of the participants; if more than one meal a day is provided, a combination of a group setting and carry-out meals may be utilized.

(2) *Hot meals.* At least one meal a day must be hot. A hot meal for the purpose of this program is one in which the principal food item is hot at the time of serving.

(3) *Special menus.* Grantees shall provide special menus as necessary for meeting the dietary needs arising from the health requirements of conditions such as diabetes and hypertension. Grantees should attempt to meet the dietary needs of varying religious and ethnic backgrounds.

(4) *Meal service standards.* Grantees shall plan for and provide meals which are wholesome, nutritious, and each of which meets a minimum of one-third of the minimum daily dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council (or State or local standards, if these standards are higher). Grantees must have an annual certification, prepared and signed by a registered dietitian, which states that each meal provided under CHSP meets the minimum daily dietary allowances.

(5) *Food stamps and agricultural commodities.* In providing meal services grantees must apply for and use food stamps and agricultural commodities as set forth in section 802(d)(2)(A).

(6) *Preference for nutrition providers*: In contracting for or otherwise providing for meal services grantees must follow the requirements of section 802(d)(2)(B). These requirements do not preclude a grantee or owner from directly preparing and providing meals under its own auspices.

§ _____ .125 Eligibility for services.

(a) *Participants, other residents, and nonresidents.* Such individuals are eligible either to participate in CHSP or to receive CHSP services, if they qualify under section 802(e)(1), (4) and (5). Under this paragraph, temporarily disabled persons are also eligible.

(b) *Economic need.* In providing services under CHSP, grantees shall give priority to very low income individuals, and shall consider their service needs in selecting program participants.

§ _____.130 Service coordinator.

(a) Each grantee must have at least one service coordinator who shall perform the responsibilities listed in section 802(d)(4).

(b) The service coordinator shall comply with the qualifications and standards required by the Secretary concerned. The service coordinator shall be trained in the subject areas set forth in section 802(d)(4), and in any other areas required by the Secretary concerned.

(c) The service coordinator may be employed directly by the grantee, or employed under a contract with a case management agency on a fee-for-service basis, and may serve less than full-time. The service coordinator or the case management agency providing service coordination shall not provide supportive services under a CHSP grant or have a financial interest in a service provider agency which intends to provide services to the grantee for CHSP.

(d) The service coordinator shall:

(1) Provide general case management and referral services to all potential participants in CHSP. This involves intake screening, upon referral from the grantee of potential program participants, and preliminary assessment of frailty or disability, using a commonly accepted assessment tool. The service coordinator then will refer to the professional assessment committee (PAC) those individuals who appear eligible for CHSP;

(2) Establish professional relationships with all agencies and service providers in the community, and develop a directory of providers for use by program staff and program participants;

(3) Refer proposed participants to service providers in the community, or those of the grantee;

(4) Serve as staff to the PAC;

(5) Complete, for the PAC, all paperwork necessary for the assessment, referral, case monitoring and reassessment processes;

(6) Implement any case plan developed by the PAC and agreed to by the program participant;

(7) Maintain necessary case files on each program participant, containing such information and kept in such form as HUD and RHS shall require;

(8) Provide the necessary case files to PAC members upon request, in connection with PAC duties;

(9) Monitor the ongoing provision of services from community agencies and keep the PAC and the agency providing the supportive service informed of the progress of the participant;

(10) Educate grant recipient's program participants on such issues as benefits application procedures (e.g. SSI, food stamps, Medicaid), service availability, and program participant options and responsibilities;

(11) Establish volunteer support programs with service organizations in the community;

(12) Assist the grant recipient in building informal support networks with neighbors, friends and family; and

(13) Educate other project management staff on issues related to ''aging-in-place'' and services coordination, to help them to work with and assist other persons receiving housing assistance through the grantee.

(e) The service coordinator shall tailor each participant's case plan to the individual's particular needs. The service coordinator shall work with community agencies, the grantee and third party service providers to ensure that the services are provided on a regular, ongoing, and satisfactory basis, in accordance with the case plan approved by the PAC and the participant.

(f) Service coordinators shall not serve as members of the PAC.

§ _____.135 Professional assessment committee.

(a) *General.* (1) A professional assessment committee (PAC), as described in this section, shall recommend services appropriate to the functional abilities and needs of each eligible project resident. The PAC shall be either a voluntary committee appointed by the project management or an agency in the community which provides assessment services and

conforms to section 802(e)(3)(A) and (B). PAC members are subject to the conflict of interest provisions in section _____ .175(b).

(2) The PAC shall utilize procedures that ensure that the process of determining eligibility of individuals for congregate services affords individuals fair treatment, due process, and a right of appeal of the determination of eligibility, and shall ensure the confidentiality of personal and medical records.

(3) The dollar value of PAC members' time spent on regular assessments after initial approval of program participants may be counted as match. If a community agency discharges the duties of the PAC, staff time is counted as its imputed value, and if the members are volunteers, their time is counted as volunteer time, according to sections _____.145(c)(2) (ii) and (iv).

(b) *Duties of the PAC.* The PAC is required to:

(1) Perform a formal assessment of each potential elderly program participant to determine if the individual is frail. To qualify as frail, the PAC must determine if the elderly person is deficient in at least three ADLs, as defined in section _____.105. This assessment shall be based upon the screening done by the service coordinator, and shall include a review of the adequacy of the informal support network (*i.e.*, family and friends available to the potential participant to assist in meeting the ADL needs of that individual), and may include a more in-depth medical evaluation, if necessary;

(2) Determine if non-elderly disabled individuals qualify under the definition of person with disabilities under section _____.105. If they do qualify, this is the acceptance criterion for them for CHSP. Persons with disabilities do not require an assessment by the PAC;

(3) Perform a regular assessment and updating of the case plan of all participants;

(4) Obtain and retain information in participant files, containing such information and maintained in such form, as HUD or RHS shall require;

(5) Replace any members of the PAC within 30 days after a member resigns. A PAC shall not do formal assessments if its membership drops below three, or if the qualified medical professional leaves the PAC and has not been replaced.

(6) Notify the grantee or eligible owner and the program participants of any proposed modifications to PAC procedures, and provide these parties with a process and reasonable time period in which to review and comment, before adoption of a modification;

(7) Provide assurance of nondiscrimination in selection of CHSP participants, with respect to race, religion, color, sex, national origin, familial status or type of disability;

(8) Provide complete confidentiality of information related to any individual examined, in accordance with the Privacy Act of 1974;

(9) Provide all formal information and reports in writing.

(c) *Prohibitions relating to the PAC.* (1) At least one PAC member shall not have any direct or indirect relationship to the grantee.

(2) No PAC member may be affiliated with organizations providing services under the grant.

(3) Individuals or staff of third party organizations that act as PAC members may not be paid with CHSP grant funds.

(d) *Eligibility and admissions.* (1) Before selecting potential program participants, each grantee (with PAC assistance) shall develop a CHSP application form. The information in the individual's application is crucial to the PAC's ability to determine the need for further physical or psychological evaluation.

(2) The PAC, upon completion of a potential program participant's initial assessment, must make a recommendation to the service coordinator for that individual's acceptance or denial into CHSP.

(3) Once a program participant is accepted into CHSP, the PAC must provide a supportive services case plan for each participant. In developing this plan, the PAC must take into consideration the participant's needs and wants. The case plan must provide the minimum supportive services necessary to maintain independence.

(e) *Transition-out procedures.* The grantee or PAC must develop procedures for providing for an individual's transition out of CHSP to another setting. Transition out is based upon the degree of supportive services needed by an individual to continue to live independently. If a program participant leaves the program, but wishes to retain supportive services, he or she may do so, as long as he or she continues to live in an eligible project, pays the full cost of services provided, and management agrees (section 802(e)(4) and (5)). A participant can be moved out of CHSP if he or she:

(1) Gains physical and mental health and is able to function without supportive services, even if only for a short time (in which case readmission, based upon reassessment to determine the degree of frailty or the disability, is acceptable);

(2) Requires a higher level of care than that which can be provided under CHSP; or

(3) Fails to pay services fees.

(f) *Procedural rights of participants.* (1) The PAC must provide an informal process that recognizes the right to due process of individuals receiving assistance. This process, at a minimum, must consist of:

(i) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(ii) A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(iii) Prompt written notification of the final decision to the participant.

(2) Procedures must ensure that any potential or current program participant, at the time of initial or regular assessment, has the option of refusing offered services and requesting other supportive services as part of the case planning process.

(3) In situations where an individual requests additional services, not initially recommended by the PAC, the PAC must make a determination of whether the request is legitimately a needs-based service that can be covered under CHSP subsidy. Individuals can pay for services other than those recommended by the PAC as long as the additional services do not interfere with the efficient operation of the program.

§ _____ .140 Participatory agreement.

(a) Before actual acceptance into CHSP, potential participants must work with the PAC and the service coordinator in developing supportive services case plans. A participant has the option of accepting any of the services under the case plan.

(b) Once the plan is approved by the PAC and the program participant, the participant must sign a participatory agreement governing the utilization of the plan's supportive services and the payment of supportive services fees. The grantee annually must renegotiate the agreement with the participant.

§ _____ .145 Cost distribution.

(a) *General.* (1) Grantees, the Secretary concerned, and participants shall all contribute to the cost of providing supportive services according to section 802(i)(A)(i). Grantees must contribute at least 50 percent of program cost, participants must contribute fees that in total are at least 10 percent of program

cost, and the Secretary concerned will provide funds in an amount not to exceed 40 percent.

(2) Section 802(i)(1)(B)(ii) creates a cost-sharing provision between grantee and the Secretary concerned if total participant fees collected over a year are less than 10 percent of total program cost. This provision is subject to availability of appropriated grant funds. If funds are not available, the grantee must assume the funding shortfall.

(b) *Prohibition on substitution of funds and maintenance of existing supportive services.* Grantees shall maintain existing funding for and provision of supportive services prior to the application date, as set forth in section 802(i)(1)(D). The grantee shall ensure that the activities provided to the project under a CHSP grant will be in addition to, and not in substitution for, these previously existing services. The value of these services do not qualify as matching funds. Such services must be maintained either for the time the participant remains in CHSP, or for the duration of CHSP grant. The grantee shall certify compliance with this paragraph to the Secretary concerned.

(c) *Eligible matching funds.* (1) All sources of matching funds must be directly related to the types of supportive services prescribed by the PAC or used for administration of CHSP.

(2) Matching funds may include:

(i) Cash (which may include funds from Federal, State and local governments, third party contributions, available payments authorized under Medicaid for specific individuals in CHSP, Community Development Block Grants or Community Services Block Grants, Older American Act programs or excess residual funds with the approval of the Secretary concerned),

(ii) The imputed dollar value of other agency or third party-provided direct services or staff who will work with or provide services to program participants; these services must be justified in the application to assure that they are the new or expanded services of CHSP necessary to keep the program participants independent. If services are provided by the state, Indian tribe, unit of general local government, or local nonprofit housing sponsor, IHA, PHA, or for-profit or not-for-profit owner, any salary paid to staff from governmental sources to carry out the program of the grantee and any funds paid to residents employed by the Program (other than from amounts under a contract under section _____.155) is allowable match.

(iii) In-kind items (these are limited to 10 percent of the 50 percent matching amount), such as the current market value of donated common or office space, utility costs, furniture, material, supplies, equipment and food used in direct provision of services. The applicant must provide an explanation for the estimated donated value of any item listed.

(iv) The value of services performed by volunteers to CHSP, at the rate of $5.00 an hour.

(d) *Limitation.* (1) The following are not eligible for use as matching funds:

(i) PHA operating funds;

(ii) CHSP funds;

(iii) Section 8 funds other than excess residual receipts;

(iv) Funds under section 14 of the U.S. Housing Act of 1937, unless used for service coordination or case management; and

(v) Comprehensive grant funds unless used for service coordination or case management;

(2) Local government contributions are limited by section 802(i)(1)(E).

(e) *Annual review of match.* The Secretary concerned will review the infusion of matching funds annually, as part of the program or budget review. If there are insufficient matching funds available to meet program requirements at any point after grant start-up, or at any time during the term of the grant (*i.e.*, if matching funds from sources other than program participant fees drop below 50 percent of total supportive services cost), the Secretary concerned may decrease the federal grant share of supportive services funds accordingly.

§ _____.150 Program participant fees.

(a) *Eligible program participants.* The grantee shall establish fees consistent with section _____.145(a). Each program participant shall pay CHSP fees as stated in paragraphs (d) and (e) of this section, up to a maximum of 20 percent of the program participant's adjusted income. Consistent with section 802(d)(7)(A), the Secretary concerned shall provide for the waiver of fees for individuals who are without sufficient income to provide for any payment.

(b) *Fees shall include:* (1) Cash contributions of the program participant;

(2) Food Stamps; and

(3) Contributions or donations to other eligible programs acceptable as matching funds under section _____.145(c).

(c) *Older Americans Act programs.* No fee may be charged for any meals or supportive services under CHSP if that service is funded under an Older Americans Act Program.

(d) *Meals fees:* (1) For full meal services, the fees for residents receiving more than one meal per day, seven days per week, shall be reasonable and shall equal between 10 and 20 percent of the adjusted income of the project resident, or the cost of providing the services, whichever is less.

(2) The fees for residents receiving meal services less frequently than as described in paragraph (d)(1) of this section shall be in an amount equal to 10 percent of the adjusted income of the project resident, or the cost of providing the services, whichever is less.

(e) *Other service fees.* The grantee may also establish fees for other supportive services so that the total fees collected from all participants for meals and other services is at least 10 percent of the total cost of CHSP. However, no program participants may be required to pay more than 20 percent of their adjusted incomes for any combination of services.

(f) *Other residents and nonresidents.* Fees shall be established for residents of eligible housing projects (other than eligible project residents) and for nonresidents who receive meals and other services from CHSP under section _____.125(a). These fees shall be in an amount equal to the cost of providing the services.

§ _____.155 Grant agreement and administration.

(a) *General.* HUD will enter into grant agreements with grantees, to provide congregate services for program participants in eligible housing projects, in order to meet the purposes of CHSP.

(b) *Term of grant agreement and reservation of amount.* A grant will be for a term of five years and the Secretary concerned shall reserve a sum equal to the total approved grant amount for each grantee. Grants will be renewable at the expiration of a term, subject to the availability of funds and conformance with the regulations in this part, except as otherwise provided in section _____.160.

(c) *Monitoring of project sites by governmental units.* States, Indian tribes, and units of general local government with a grant covering multiple projects shall monitor, review, and evaluate Program performance at each project site for compliance with CHSP regulations and procedures, in such manner as prescribed by HUD or RHS.

(d) *Reports.* Each grantee shall submit program and fiscal reports and program budgets to the Secretary concerned in such form and at such times, as the Secretary concerned requires.

(e) *Enforcement.* The Secretary concerned will enforce the obligations of the grantee under the agreement through such action as may be

necessary, including terminating grants, recapturing grant funds, and imposing sanctions.

(1) These actions may be taken for:

(i) A grantee's non-compliance with the grant agreement or HUD or RHS regulations;

(ii) Failure of the grantee to provide supportive services within 12 months of execution of the grant agreement.

(2) Sanctions include but are not limited to the following:

(i) Temporary withholding of reimbursements or extensions or renewals under the grant agreement, pending correction of deficiencies by the grantee;

(ii) Setting conditions in the contract;

(iii) Termination of the grant;

(iv) Substitution of grantee; and

(v) Any other action deemed necessary by the Secretary concerned.

(f) *Renewal of grants.* Subject to the availability of funding, satisfactory performance, and compliance with the regulations in this part:

(1) Grantees funded initially under this part shall be eligible to receive continued, non-competitive renewals after the initial five-year term of the grant.

(2) Grantees will receive priority funding and grants will be renewed within time periods prescribed by the Secretary concerned.

(g) *Use of Grant Funds.* If during any year, grantees use less than the annual amount of CHSP funds provided to them for that year, the excess amount can be carried forward for use in later years.

§ _____ .160 Eligibility and priority for 1978 Act recipients.

Grantees funded initially under 42 U.S.C. 8001 shall be eligible to receive continued, non-competitive funding subject to its availability. These grantees will be eligible to receive priority funding under this part if they comply with the regulations in this part and with the requirements of any NOFA issued in a particular fiscal year.

§ _____.165 Evaluation of Congregate Housing Services Programs.

(a) Grantees shall submit annually to the Secretary concerned, a report evaluating the impact and effectiveness of CHSPs at the grant sites, in such form as the Secretary concerned shall require.

(b) The Secretaries concerned shall further review and evaluate the performance of CHSPs at these sites and shall evaluate the Program as a whole.

(c) Each grantee shall submit a certification with its application, agreeing to cooperate with and to provide requested data to the entity responsible for the Program's evaluation, if requested to do so by the Secretary concerned.

§ _____.170 Reserve for supplemental adjustment.

The Secretary concerned may reserve funds subject to section 802(o). Requests to utilize supplemental funds by the grantee shall be transmitted to the Secretary concerned in such form as may be required.

§ _____.175 Other Federal requirements.

In addition to the Federal Requirements set forth in 24 CFR part 5, the following requirements apply to grant recipient organizations in this program:

(a) *Office of Management and Budget (OMB) Circulars and Administrative Requirements.* The policies, guidelines, and requirements of OMB Circular No. A–87 and 24 CFR part 85 apply to the acceptance and use of assistance under this program by public body grantees. The policies, guidelines, and requirements of OMB Circular No. A–122 apply to the acceptance and use of assistance under this program by non-profit grantees. Grantees are also subject to the audit requirements described in 24 CFR part 44 (OMB Circular A–128).

(b) *Conflict of interest.* In addition to the conflict of interest requirements in OMB Circular A–87 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the applicant, and who exercises or has exercised any function or responsibilities with respect to activities assisted with CHSP grant funds, or who is 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 the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or any proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties during his or her tenure, or for one year thereafter. CHSP employees may receive reasonable salary and benefits.

(c) *Disclosures required by Reform Act.* Section 102(c) of the HUD Reform Act of 1989 (42 U.S.C. 3545(c)) requires disclosure concerning other government assistance to be made available with respect to the Program and parties with a pecuniary interest in CHSP and submission of a report on expected sources and uses of funds to be made available for CHSP. Each applicant shall include information required by 24 CFR part 12 on form HUD–2880 ''Applicant/Recipient Disclosure/Update Report,'' as required by the Federal Register Notice published on January 16, 1992, at 57 FR 1942.

(d) *Nondiscrimination and equal opportunity.* (1) The fair housing poster regulations (24 CFR part 110) and advertising guidelines (24 CFR part 109);

(2) The Affirmative Fair Housing Marketing Program requirements of 24 CFR part 200, subpart M, and the implementing regulations at 24 CFR part 108; and

(3) Racial and ethnic collection requirements—Recipients must maintain current data on the race, ethnicity and gender of program applicants and beneficiaries in accordance with section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.

(e) *Environmental requirements.* Support services, including the operating and administrative expenses described in section_____.115(a), are categorically excluded from the requirements of the National Environmental Policy Act (NEPA) of 1969. These actions, however, are not excluded from individual compliance requirements of other environmental statutes, Executive Orders, and agency regulations where appropriate. When the responsible official determines that any action under this part may have an environmental effect because of extraordinary circumstances, the requirements of NEPA shall apply.

Adoption of the Final Common Rule

The agency specific adoption of the final common rule, which appears at the end of the common preamble, appears below:

RURAL HOUSING SERVICE

7 CFR Part 1944

List of Subjects in 7 CFR Part 1944

Farm labor housing, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, and Rural rental housing.

Dated: July 18, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

Title 7 of the Code of Federal Regulations, part 1944 is amended as follows:

1. The authority citation for subpart F continues to read as follows:

Authority: 42 U.S.C. 1480, 8011 and 5 U.S.C. 301.

2. Subpart F, consisting of §§ 1944.251 [_____.100] through

1944.266 [_____.175], is revised to read as set forth at the end of the common preamble.

PART 1944—HOUSING

Subpart F—Congregate Housing Services Program

Sec.
1944.251 Purpose.
1944.252 Definitions.
1944.253 Announcement of fund availability, application process and selection.
1944.254 Program costs.
1944.255 Eligible supportive services.
1944.256 Eligibility for services.
1944.257 Service coordinator.
1944.258 Professional assessment committee.
1944.259 Participatory agreement.
1944.260 Cost distribution.
1944.261 Program participant fees.
1944.262 Grant agreement and administration.
1944.263 Eligibility and priority for 1978 Act recipients.
1944.264 Evaluation of Congregate Housing Services Programs.
1944.265 Reserve for supplemental adjustment.
1944.266 Other Federal requirements.

3. The words ''this part'' are revised to read ''this subpart'' in the following places: §§ 1944.100, 1944.105 in the definition for ''*Eligible housing for the elderly*'', 1944.115(b)(2)(viii), 1944.155 (b) introductory text, (f) introductory text and (f)(1), 1944.160, and 1944.175(e).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 700

List of Subjects in 24 CFR Part 700

Aged, Grant programs—housing and community development, Individuals with disabilities, Low and moderate income housing, Nutrition, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Supportive services.

Title 24 of the Code of Federal Regulations is amended by revising part 700 to read as set forth at the end of the common preamble.

Dated: March 14, 1996.

Henry G. Cisneros,

Secretary.

PART 700—CONGREGATE HOUSING SERVICES PROGRAM

Sec.
700.100 Purpose.
700.105 Definitions.
700.110 Announcement of fund availability, application process and selection.
700.115 Program costs.
700.120 Eligible supportive services.
700.125 Eligibility for services.
700.130 Service coordinator.
700.135 Professional assessment committee.
700.140 Participatory agreement.
700.145 Cost distribution.
700.150 Program participant fees.
700.155 Grant agreement and administration.
700.160 Eligibility and priority for 1978 Act recipients.
700.165 Evaluation of Congregate Housing Services Programs.
700.170 Reserve for supplemental adjustment.
700.175 Other Federal requirements.

Authority: 42 U.S.C. 3535(d) and 8011.

[FR Doc. 96–20563 Filed 8–16–96; 8:45 am]
BILLING CODE 3410–07–P; 4210–32–P

Federal Register

Monday
August 19, 1996

Part III

Department of Housing and Urban Development

24 CFR Part 280

Streamlining of the Nehemiah Housing Opportunity Grants Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 280

[Docket No. FR–4090–F–01]

RIN 2502–AG76

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Streamlining of the Nehemiah Housing Opportunity Grants Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the Nehemiah Housing Opportunity Grants Program (NHOP). Congress is no longer authorizing grants under NHOP. Accordingly, this final rule removes HUD's obsolete regulations implementing NHOP from title 24. Those provisions which are necessary to the administration of existing NHOP grants will be retained. This rule will make HUD's regulations governing NHOP clearer and more concise.

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT: Richard K. Manuel, Office of Insured Single Family Housing, Room 9272, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone number (202) 708–2700. (This is not a toll-free telephone number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR part 280 describe the requirements for the Nehemiah Housing Opportunity Grants Program (NHOP). Under the NHOP, HUD made grants to nonprofit organizations to be used to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with HUD approved programs. Section 289(a) of the National Affordable Housing Act (42 U.S.C. 12839) repealed the NHOP. Accordingly, HUD is no longer making new NHOP grants. This final rule removes the obsolete regulations at 24 CFR part 280. However, those regulatory provisions which are necessary to the administration of existing NHOP grants are being retained.

For the convenience of readers, the following table summarizes the changes made by this final rule to 24 CFR part 280:

Section	Section title	Summary of changes to section
§ 280.1	Applicability and Scope	Amended to reflect elimination of the NHOP.
§ 280.5	Definitions	Amended to remove obsolete definitions.
§ 280.100	NHOP Assistance	Redesignated as § 280.10. Amended to reflect elimination of the NHOP.
§ 280.103	Assistance under other HUD programs	Redesignated as § 280.15.
§ 280.105	Program size	Removed.
§ 280.110	Program location	Removed.
§ 280.115	Home quality	Redesignated as § 280.20.
§ 280.200	Notice of fund availability	Removed.
§ 280.205	Application requirements	Removed.
§ 280.207	Other Federal requirements	Redesignated as § 280.25.
§ 280.210	Selection process	Removed.
§ 280.215	Threshold requirements	Removed.
§ 280.220	Ranking criteria	Removed.
§ 280.225	Final selection	Removed.
§ 280.300	Obligation of funds	Removed.
§ 280.303	Grant agreement	Redesignated as § 280.30.
§ 280.305	Minimum participation	Redesignated as § 280.35.
§ 280.315	Eligible purchasers	Redesignated as § 280.40.
§ 280.320	Sales contract and downpayment requirements.	Redesignated as § 280.45. Amended to reflect changes made by this final rule.
§ 280.322	Loan requirements	Redesignated as § 280.50. Amended to reflect changes made by this final rule.
§ 280.330	Repayment of loan	Redesignated as § 280.55.
§ 280.335	Funding amendments and deobligation of funds.	Redesignated as § 280.60.

II. Justification for Final Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides for exceptions to the general rule if HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1.). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This final rule merely removes obsolete regulatory provisions from title 24. The rule does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

III. Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing obsolete provisions. Specifically, this rule removes HUD's outdated regulations at 24 CFR part 280, which govern participation in NHOP. HUD is only retaining those provisions which are necessary to the administration of existing NHOP grants. The final rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by removing obsolete provisions and does not alter the environmental effect of the

regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the regulations implementing NHOP. This finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule removes the outdated regulations governing NHOP from title 24. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. This final rule streamlines HUD's regulations governing NHOP at 24 CFR part 280. Specifically, this rule removes outdated provisions from part 280. No significant change in existing HUD policies or programs will result from promulgation of this rule.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

List of Subjects in 24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 280 is amended as follows:

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

1. The authority citation for 24 CFR part 280 continues to read as follows:

Authority: 12 U.S.C. 1715*l* note; 42 U.S.C. 3535(d).

2. The headings for subparts A, B, C, and D are removed.

3. Section 280.1 is amended by revising paragraph (a) to read as follows:

§ 280.1 Applicability and scope.

(a) This part sets forth the requirements for existing grants under the Nehemiah Housing Opportunity Grants Program (NHOP). NHOP was established by title VI of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l*). Under NHOP, HUD made grants to nonprofit organizations to be used to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with a HUD approved program. NHOP was repealed by Section 289(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839). Accordingly, no new grants are being awarded under the program.

* * * * *

§ 280.5 [Amended]

4. Section 280.5 is amended by removing the definitions of ''Applicant'', ''*Contiguous parcels of land*'', and ''*Financial and other contributions to the program*.''

§ 280.100 [Redesignated]

5. Section 280.100 redesignated as § 280.10 and is revised to read as follows:

§ 280.10 NHOP assistance.

Recipients may only use assistance under this part to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

§ 280.103 [Redesignated]

6. Section 280.103 is redesignated as § 280.15.

§§ 280.105 and 280.110 [Removed]

7. Sections 280.105 and 280.110 are removed.

§ 280.115 [Redesignated]

8. Section 280.115 is redesignated as § 280.20.

§§ 280.200 and 280.205 [Removed]

9. Sections 280.200 and 280.205 are removed.

§ 280.207 [Redesignated]

10. Section 280.207 is redesignated as § 280.25.

§§ 280.210, 280.215, 280.220, 280.225, and 280.300 [Removed]

11. Sections 280.210, 280.215, 280.220, 280.225, and 280.300 are removed.

§ 280.303 [Redesignated]

12. Section 280.303 is redesignated as § 280.30.

§ 280.305 [Redesignated]

13. Section 280.305 is redesignated as § 280.35 and amended by revising the introductory text to read as follows:

§ 280.35 Minimum participation.

Except as provided in paragraph (a) or (b) of this section, the recipient may not begin the construction or substantial rehabilitation of homes until 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments required under § 280.45(b) have been made.

* * * * *

§ 280.315 [Redesignated]

14. Section 280.315 is redesignated as § 280.40.

§ 280.320 [Redesignated]

15. Section 280.320 is redesignated as § 280.45 and amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 280.45 Sales contract and downpayment requirements.

(a) * * *

(2) The repayment provisions described in § 280.55 of this part.

* * * * *

(b) * * *

(2) *Date of downpayment.* The downpayment must be made on the date required by the recipient. Under § 280.35, however, no construction or rehabilitation may be begun until at least 25 percent of the homes constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments are made.

* * * * *

16. Section 280.322 is redesignated as § 280.50 and amended by revising

paragraphs (a)(4) and (a)(6) to read as follows:

§ 280.50 Loan requirements.

(a) * * *

(4) Is repayable to HUD upon the sale, lease, or other transfer of the property; except, as an alternative, the nonprofit organization may elect to provide the Homeowner Incentive under § 280.55(c) for subsequent sale or transfer of the property (the Homeowner Incentive is not available upon the lease of the property).

* * * * *

(6) May not be used by the family to provide the downpayment required under § 280.45.

* * * * *

§ 280.330 [Redesignated]

17. Section 280.330 is redesignated as § 280.55.

§ 280.335 [Redesignated]

18. Section 280.335 is redesignated as § 280.60.

Dated: August 6, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–21032 Filed 8–16–96; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Monday
August 19, 1996

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1996.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of August 1, 1996, of 24 rescission proposals and six deferrals contained in eight special messages for FY 1996. These messages were transmitted to Congress on October 19, 1995; and on February 21, February 23, March 5, March 13, April 12, May 14, and June 24, 1996.

Rescissions (Attachments A and C)

As of August 1, 1996, 24 rescission proposals totaling $1.4 billion had been transmitted to the Congress. Congress approved eight of the Administration's rescission proposals in P.L. 104–134. A total of $963.4 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1996 rescission proposals.

Deferrals (Attachments B and D)

As of August 1, 1996, $2,218.6 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1996.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the Federal Register cited below:

60 FR 55154, Friday, October 27, 1995
61 FR 8691, Tuesday, March 5, 1996
61 FR 10812, Friday, March 15, 1996
61 FR 13350, Tuesday, March 26, 1996
61 FR 17915, Tuesday, April 23, 1996
61 FR 26226, Friday, May 24, 1996
61 FR 34909, Wednesday, July 3, 1996

Jacob J. Lew,

Acting Director.

BILLING CODE 3110–01–P

ATTACHMENT A

STATUS OF FY 1996 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President.....	1,425.9
Rejected by the Congress.....	-462.5
Amounts rescinded by P.L. 104-134.....	-963.4
Currently before the Congress.....	0

ATTACHMENT B

STATUS OF FY 1996 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	3,689.7
Routine Executive releases through July 1, 1996..... (OMB/Agency releases of $1,471.0 million, partially offset by cumulative positive adjustment of $4 thousand.)	-1,471.0
Overturned by the Congress.....	---
Currently before the Congress.....	2,218.6

ATTACHMENT C
Status of FY 1996 Rescission Proposals - As of August 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research, Education, and Extension Service								
Buildings and facilities	R96-8		12,000	3-5-96	12,000	5-6-96		
DEPARTMENT OF DEFENSE								
Procurement								
Aircraft procurement, Army	R96-11		140,000	4-12-96	140,000	6-10-96		
Procurement of ammunition, Army	R96-12		47,200	4-12-96	47,200	6-10-96		
Other procurement, Army	R96-13		5,800	4-12-96	5,800	6-10-96		
Procurement of ammunition, Navy and Marine Corps	R96-15		10,000	4-12-96	10,000	6-10-96		
Shipbuilding and conversion, Navy	R96-14		9,200	4-12-96	9,200	6-10-96		
Missile procurement, Air Force	R96-1		310,000	2-21-96			310,000	P.L. 104-134
Other procurement, Air Force	R96-2		265,000	2-21-96			265,000	P.L. 104-134
National guard and reserve equipment	R96-16		13,600	4-12-96	13,600	6-17-96		
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation Army	R96-4		19,500	2-23-96			19,500	P.L. 104-134
	R96-17		9,600	4-12-96	9,600	6-10-96		
Research, development, test, and evaluation Navy	R96-5		35,000	2-23-96			35,000	P.L. 104-134
	R96-18		39,800	4-12-96	39,800	6-10-96		
Research, development, test, and evaluation Air Force	R96-3		245,000	2-21-96			245,000	P.L. 104-134
	R96-6		44,900	2-23-96			44,900	P.L. 104-134
	R96-19		58,000	4-12-96	58,000	6-10-96		

1/ Funds never withheld from obligation.

ATTACHMENT C
Status of FY 1996 Rescission Proposals - As of August 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF DEFENSE - Continued								
Research, development, test, and evaluation								
Defense-wide	R96-7		40,600	2-23-96			40,600	P.L. 104-134
	R96-20		67,200	4-12-96	67,200	6-19-96		
Military Construction								
Military contruction, Army	R96-21		10,000	3-13-96	10,000	6-7-96		
Military contruction, Navy	R96-22		8,000	3-13-96	8,000	6-5-96		
Military contruction, Air Force	R96-23		15,000	3-13-96	15,000	5-23-96		
Military contruction, Defense-wide	R96-24		13,000	3-13-96	13,000	6-7-96		
Military contruction, Air National Guard	R96-25		4,000	3-13-96	4,000	6-7-96		
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	R96-9		3,500	3-5-96	1/		3,400	P.L. 104-134
TOTAL RESCISSIONS		**0**	**1,425,900**		**462,400**		**963,400**	

1/ Funds never withheld from obligation.

[FR Doc. 96-21074 Filed 8-16-96; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT D
Status of FY 1996 Deferrals - As of August 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8-1-96
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D96-1	75,000		10-19-95					
	D96-1A		1,942,076	2-23-96	1,239,656			4	777,424
Foreign military financing program	D96-4	1,385,140		2-23-96					
	D96-4A		26	5-14-96	84,217				1,300,949
Foreign military financing loan program	D96-5	64,400		2-23-96					64,400
Agency for International Development									
International disaster assistance, Executive	D96-6	124,625		2-23-96	124,625				0
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D96-3	40,486		10-19-95					
	D96-3A		50,545	3-5-96	22,546				68,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D96-2	7,321		10-19-95					
	D96-2A		44	6-24-96					7,365
TOTAL, DEFERRALS		**1,696,972**	**1,992,692**		**1,471,043**			**4**	**2,218,624**

Federal Register

Monday
August 19, 1996

Part V

The President

Executive Order 13014—Maintaining Unofficial Relations With the People on Taiwan

Federal Register
Vol. 61, No. 161
Monday, August 19, 1996

Presidential Documents

Title 3—

The President

Executive Order 13014 of August 15, 1996

Maintaining Unofficial Relations With the People on Taiwan

In light of the recognition of the People's Republic of China by the United States of America as the sole legal government of China, and by the authority vested in me as President of the United States of America by the Taiwan Relations Act (Public Law 96-8, 22 U.S.C. 3301 *et seq.*) (''Act''), and section 301 of title 3, United States Code, in order to facilitate the maintenance of commercial, cultural, and other relations between the people of the United States and the people on Taiwan without official representation or diplomatic relations, it is hereby ordered as follows:

Section 1. *Delegation and Reservation of Functions.*

1-101. Exclusive of the functions otherwise delegated, or reserved to the President by this order, there are delegated to the Secretary of State (''Secretary'') all functions conferred upon the President by the Act, including the authority under section 7(a) of the Act to specify which laws of the United States relative to the provision of consular services may be administered by employees of the American Institute on Taiwan (''Institute''). In carrying out these functions, the Secretary may redelegate his authority, and shall consult with other departments and agencies as he deems appropriate.

1-102. There are delegated to the Director of the Office of Personnel Management the functions conferred upon the President by paragraphs (1) and (2) of section 11(a) of the Act. These functions shall be exercised in consultation with the Secretary.

1-103. There are reserved to the President the functions conferred upon the President by section 3, the second sentence of section 9(b), and the determinations specified in section 10(a) of the Act.

Sec. 2. *Specification of Laws and Determinations.*

2-201. Pursuant to section 9(b) of the Act, and in furtherance of the purposes of the Act, the procurement of services may be effected by the Institute without regard to the following provisions of law and limitations of authority as they may be amended from time to time:

(a) Sections 1301(d) and 1341 of title 31, United States Code, and section 3732 of the Revised Statutes (41 U.S.C. 11) to the extent necessary to permit the indemnification of contractors against unusually hazardous risks, as defined in Institute contracts, consistent, to the extent practicable, with section 52.228-7 of the Federal Acquisition Regulations;

(b) Section 3324 of title 31, United States Code;

(c) Sections 3709, 3710, and 3735 of the Revised Statutes, as amended (41 U.S.C. 5, 8, and 13);

(d) Section 2 of title III of the Act of March 3, 1933 (41 U.S.C. 10a);

(e) Title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251-260);

(f) The Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613);

(g) Chapter 137 of title 10, United States Code (10 U.S.C. 2301-2316);

(h) The Act of May 11, 1954 (the ''Anti-Wunderlich Act'') (41 U.S.C. 321, 322); and

(i) Section (f) of 41 U.S.C. 423.

2-202. (a) With respect to cost-type contracts with the Institute under which no fee is charged or paid, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract and irrespective of rights that may have accrued under the contractor the amendments or modifications thereof.

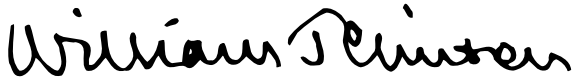
(b) With respect to contracts heretofore or hereafter made under the Act, other than those described in subsection (a) of this section, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights that may have accrued under the contract or the amendments or modifications thereof, if the Secretary determines in each case that such action is necessary to protect the foreign policy interests of the United States.

2-203. Pursuant to section 10(a) of the Act, the Taipei Economic and Cultural Representative Office in the United States (''TECRO''), formerly the Coordination Council for North America Affairs (''CCNAA''), is determined to be the instrumentality established by the people on Taiwan having the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with the Act. Nothing contained in this determination or order shall affect, or be construed to affect, the continued validity of agreements, contracts, or other undertakings, of whatever kind or nature, entered into previously by CCNAA.

Sec. 3. *President's Memorandum of December 30, 1978.*

3-301. Agreements and arrangements referred to in paragraph (B) of President Carter's memorandum of December 30, 1978, entitled ''Relations With the People on Taiwan'' (44 FR 1075) shall, unless otherwise terminated or modified in accordance with law, continue in force and be performed in accordance with the Act and this order.

Sec. 4. *General.* This order supersedes Executive Order No. 12143 of June 22, 1979.



THE WHITE HOUSE,
August 15, 1996.

[FR Doc. 96–13014
Filed 8–16–96; 11:24 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 61, No. 161

Monday, August 19, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws

Public Laws Update Services (numbers, dates, etc.) **523–6641**

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, AUGUST

40145–40288 1
40289–40504 2
40505–40716 5
40717–40948 6
40949–41292 7
41293–41482 8
41483–41728 9
41729–41948 10
41949–42136 13
42137–42370 14
42371–42528 15
42529–42772 16
42773–42964 19

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
10163 (Amended by EO 13013) 41483
12143 (Superceded by EO 13014) 42963
13013 41483
13014 42963

Administrative Orders
Notice of August 14, 1996 42527

5 CFR

531 ..... 40949, 42939
831 41714
837 41714
841 41714
842 41714
843 41714
844 41714
847 41714
1620 41485
2634 40145
2635 40950
2470 41293
2471 41293
2472 41293
2473 41293
Ch. LIV 40500
Ch. LXVI 40505

Proposed Rules:
591 41746

7 CFR

9 42773
19 42371
26 40145
51 40289
400 40952
457 41297
620 42137
663 41949
915 40290
920 40506
922 40954
923 40954
924 ..... 40954, 40956
927 42529
928 40146
929 41729
931 42529
932 40507
944 40507
985 40959
1005 41488
1007 41488
1011 41488
1046 41488
1467 42137
1703 42462
1944 42842
4000 42371

Proposed Rules:
210 42396
220 ..... 40481, 42396
225 42396
226 ..... 40481, 42396
300 42565
301 ..... 40354, 40361, 41990, 42824
319 ..... 40362, 42565
457 ..... 41527, 41531
911 40550
944 40550
1530 40749
1710 41025
1714 41025
1717 41025
1786 41025

8 CFR

217 41684

Proposed Rules:
3 ..... 40552, 41684
103 ..... 40552, 41684
212 40552
235 40552
236 40552
242 40552
287 40552
292 40552
292a 40552

9 CFR

78 41730
94 40292
317 42143

10 CFR

50 41303

Proposed Rules:
25 40555
95 40555
430 41748
434 40882
435 40882
490 41032

11 CFR

104 42371
110 40961

Proposed Rules:
109 41036
110 41036

12 CFR

26 40293
212 40293
348 40293
563 40293
701 41312
931 40311
933 42531

Proposed Rules:
3 42565

208.....42565
225.....42565
325.....42565
357.....40756
567.....42565
613.....42091
614.....42091
615.....42901
618.....42901
619.....42901
620.....42901
626.....42901
703.....41750
704.....41750
932.....42570
934.....41535
935.....40364
941.....42570
1270.....42824

13 CFR

107.....41496
121.....42376

14 CFR

17 (2 documents) 42396, 42397
25.....41949,42144
39 .....40313, 40511, 41733, 41951, 41953, 41955, 41957, 42549, 42773, 42776, 42777, 42779, 42781, 42782
71 .....40147, 40315, 40316, 40717, 40718, 40719, 40961, 41684, 41735, 41736, 42146, 42784, 42785
73.....42550
95.....40148
97 .....40150, 40151, 42551, 42552, 42554

Proposed Rules:

23.....41688
25 .....40710, 41688, 41924, 42577
33.....41688
39 .....40159, 40758, 40760, 40762, 41037, 41039, 41537, 41539, 41751, 41753, 41755, 41757, 42195, 42825
71.....40365
91.....41040
93.....41040
121.....41040
135.....41040
255.....42197, 42208
Ch. 1 41750

15 CFR

679.....40481
774.....41326
799A 41326

16 CFR

1700.....40317

Proposed Rules:

1507.....41043

17 CFR

1.....41496
4.....42146
211.....40721
230.....42786
239.....42786
270.....42786
274.....42786

18 CFR

284.....40962
381.....40722

Proposed Rules:

35.....41759
284.....41406

19 CFR

10.....41737
12.....41737
102.....41737
134.....41737

20 CFR

348.....42377
404.....41329

21 CFR

73.....40317
101 .....40320, 40963, 42742
136.....40513
137.....40513
139.....40513
175.....42378
177.....42379
178.....42381
179.....42381
184.....40317
522.....41498, 42383
556.....42383
601.....40153
620.....40153
630.....40153
640.....40153
650.....40153
660.....40153
680.....40153
1309.....40981
1310.....40981
1313.....40981

Proposed Rules:

201.....42826
331.....42826
352.....42398

22 CFR

126.....41499, 41737
602.....40332

23 CFR

Proposed Rules:

655.....40484

24 CFR

103.....41480
111.....41282
115.....41282
203.....42786
221.....42786
280.....42952
700.....42949
982.....42129
3500.....41944

Proposed Rules:

Ch. IX.....42939
10.....42722

25 CFR

Proposed Rules:

214.....41365

26 CFR

1.....40993, 42165
31.....40993
301.....42178
602.....40993

Proposed Rules:

1.....42401
31.....42401
35a.....42401
301.....42401
502.....42401
503.....42401
509.....42401
513.....42401
514.....42401
516.....42401
517.....42401
517.....42401
520.....42401
521.....42401

27 CFR

252.....41500
290.....41500

Proposed Rules:

4.....40568
5.....40568
7.....40568
19.....40568
20.....40568
22.....40568
24.....40568
25.....40568
27.....40568
70.....40568
250.....40568
251.....40568
252.....42462
290.....42462

28 CFR

29.....40723
42.....42556
90.....40727

29 CFR

4.....40714
5.....40714
1691.....42556
1926.....41738
2510.....41220
4044.....42384

Proposed Rules:

1.....40366
5.....40366
102.....40369

30 CFR

56.....42787
57.....42787
203.....40734
735.....40155
937.....40155
946.....42788
950.....40735

Proposed Rules:

250.....41541
936.....40369

31 CFR

211.....41739

Proposed Rules:

344.....40764

32 CFR

Proposed Rules:

202.....40764

33 CFR

100 .....40513, 42505, 41506
110.....40993
117.....40515
154.....41452, 42462
156.....41452
157.....41684
165.....40515, 40994

Proposed Rules:

165.....40587

36 CFR

31.....40996
211.....415070

Proposed Rules:

7.....41058
242.....41060

37 CFR

1.....42790
15.....42807
15a.....42807
101.....40997
102.....40997
501.....40997

38 CFR

Proposed Rules:

1.....40589
3.....41368
17.....41108

39 CFR

111.....42478
233.....42557

Proposed Rules:

701.....42219

40 CFR

3.....40500
5.....41330
30.....41959
51.....40940, 41838
52 .....40516, 41331, 41335, 41338, 41342, 41838
60.....42808
80.....42812
81.....40516, 41342
85.....40940
122.....41698
180 .....40337, 40338, 40340
261.....40519
271.....40520, 41345
272.....41345
282.....41507
300.....40523

Proposed Rules:

52 .....40591, 40592, 41371, 41372, 42939
59.....40161
64.....41991
70.....41991, 42222
71.....41991
80.....42827
81 .....41371, 41759, 41764
153.....41764
159.....41764
260.....41111
261.....41111, 42318
262.....41111
264.....41111
268.....41111
269.....41111
271.....41111, 42318
281.....40592
300 .....40371, 42402, 42404
302.....42318

41 CFR

50–201.....40714
50–206.....40714
101–11.....41000
101–35.....41003
101–43.....41352
101–46.....41352
201–23.....40708
201–24.....40708
Ch. 301.....40524

42 CFR

406.....40343
407.....40343
408.....40343
415.....42385
416.....40343
417.....42385
473.....42385
498.....42385

43 CFR

4.....40347
12.....40525

Proposed Rules:

1862.....42579
3600.....40373
3610.....40373
3620.....40373
3860.....42407

44 CFR

64.....40525, 42179
65.....40527

Proposed Rules:

67.....40595

45 CFR

1336.....42817
1610.....41960
1617.....41963
1632.....41964
1633.....41965

46 CFR

31.....41684
35.....41684
70.....40281
108.....40281
133.....40281
153.....42822
168.....40281
199.....40281
572.....40530

Proposed Rules:

10.....41208
15.....41208

47 CFR

1 .....40155, 41006, 41966
2.....41006, 42386
15.....41006, 42558
20.....40348
24.....41006
63.....40531
64.....42181, 42558
68.....42181, 42386
73 .....40156, 40746, 41019, 42189, 42190, 42394
90.....40747
97.....41006

Proposed Rules:

20.....40374
25.....40772
32.....40161, 41208
64.....40161, 41208
73 .....40774, 40775, 41114, 42228, 42229, 42230, 42412, 42413

48 CFR

Ch. 1.....41466, 41477
2.....41467
5.....41467
7.....41467
8.....41467
9.....41467, 41472
12.....41467
15.....41467
16.....41467
17.....41467
19.....41467
22.....41467
23.....41473
25.....41475
31.....41476
32.....41467
33.....41467
34.....41467
37.....41467
38.....41467
39.....41467
45.....41467
46.....41467
51.....41467
52.....41467, 41473
53.....41467
506.....42190
547.....42190
552.....42190, 46462
719.....42939
722.....42939
752.....42939
901.....41702
905.....41702
906.....41702
908.....41702
909.....41684
915.....41702
916.....41702
917.....41702
922.....41702
928.....41702
932.....41702
933.....41702
935.....41702
936.....41702
942.....41702
945.....41702
952.....41702
971.....41702
1801.....40533
1802.....40533
1803.....40533
1804.....40533
1805.....40533
1806.....40533
1825.....42394
1852.....40533

Proposed Rules:

1.....41212
4.....41212, 41214
5.....41212
7.....40284
12.....41214
14.....41212
15.....40284, 41214
16.....40284, 41214
25.....41214
31.....41214
36.....41212
37.....40284
46.....40284, 41214
52.....40284, 41214
909.....40775
952.....40775
970.....40775

49 CFR

192.....41019
390.....42822
544.....41985
571.....41355, 41510

Proposed Rules:

361.....40781
362.....40781
363.....40781
364.....40781
385.....40781
386.....40781
391.....40781
393.....40781
571 .....40784, 41510, 41764
1002.....42190

50 CFR

13.....40481
14.....40481
17.....41020
20.....42492
222.....41514
285.....40352
660.....40156, 40157
679 .....40158, 40353, 40748, 41024, 41363, 41523, 41744

Proposed Rules:

20 .....42495, 42500, 42506, 42730
30.....41115
100.....41060
216.....40377
217.....41116
222.....41116, 41541
227.....40810
300.....41987
622.....42413, 42822
660.....41988
679.....40380

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Beans (frozen green and frozen wax); grade standards; published 7-19-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Hog cholera and swine vesicular disease; disease status change--

Netherlands; published 8-2-96

COMMERCE DEPARTMENT

Patent and Trademark Office

Service of Process; Testimony by Employees and the Production of Documents in Legal Proceedings; CFR parts removed; published 8-19-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Contract award; sealed bidding; construction; published 6-20-96

Contract cost principles and procedures; agency supplements; published 6-20-96

Convict labor use; published 6-20-96

Fluctuating exchange rates; published 6-20-96

Inspection clauses; fixed price; published 6-20-96

Justification and approval thresholds; published 6-20-96

Legislative lobbying costs; published 6-20-96

Master subcontracting plans; published 6-20-96

National Industrial Security Program Operating Manual; published 6-20-96

Postponement of bid openings or closing dates; published 6-20-96

Predetermined indirect cost rates; published 6-20-96

Quality assurance actions; electronic screening; published 6-20-96

Quality assurance nonconformances; published 6-20-96

Quick-closeout procedures; published 6-20-96

Records retention; published 6-20-96

Solicitation provisions; contract clauses; published 6-20-96

Termination for convenience; published 6-20-96

Travel costs; published 6-20-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

State programs approval and Federal authorities delegation; published 7-10-96

Surface coating operations from new or existing shipbuilding and ship repair facilities--

Compliance date revision and implementation plan submittal deadline extension; published 6-18-96

Air programs:

Clean Air Act--

Accidental release prevention; regulated substances and thresholds list; published 6-20-96

Chemical accidental release prevention requirements; risk management programs; published 6-20-96

Air quality implementation plans; approval and promulgation; various States:

Louisiana; published 6-19-96

FEDERAL COMMUNICATIONS COMMISSION

Communications equipment:

Radio frequency devices--

Personal computers and peripherals; equipment authorization procedures streamlining; published 6-19-96

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:

FAC 90-39 implementation and miscellaneous changes

Correction; published 8-14-96

Federal Acquisition Regulation (FAR):

Contract award; sealed bidding; construction; published 6-20-96

Contract cost principles and procedures; agency supplements; published 6-20-96

Convict labor use; published 6-20-96

Fluctuating exchange rates; published 6-20-96

Inspection clauses; fixed price; published 6-20-96

Justification and approval thresholds; published 6-20-96

Legislative lobbying costs; published 6-20-96

Master subcontracting plans; published 6-20-96

National Industrial Security Program Operating Manual; published 6-20-96

Postponement of bid openings or closing dates; published 6-20-96

Predetermined indirect cost rates; published 6-20-96

Quality assurance actions; electronic screening; published 6-20-96

Quality assurance nonconformances; published 6-20-96

Quick-closeout procedures; published 6-20-96

Records retention; published 6-20-96

Solicitation provisions; contract clauses; published 6-20-96

Termination for convenience; published 6-20-96

Travel costs; published 6-20-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Federal regulatory review; CFR parts removed; published 7-19-96

Medical devices:

Labeling; Federal regulatory reform; published 7-19-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Single family mortgage insurance; annual premium adjustment; published 7-19-96

Correction; published 8-19-96

INTERIOR DEPARTMENT

Indian Affairs Bureau

Financial activities:

Alaska resupply operation; U.S.M.S. North Star decommissioning; Federal regulatory review; published 6-20-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Virginia; published 8-19-96

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Aliens--

Alien registration receipt card (Form I-151) as evidence of registration for lawful permanent resident aliens; removal; published 7-19-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contract award; sealed bidding; construction; published 6-20-96

Contract cost principles and procedures; agency supplements; published 6-20-96

Convict labor use; published 6-20-96

Fluctuating exchange rates; published 6-20-96

Inspection clauses; fixed price; published 6-20-96

Justification and approval thresholds; published 6-20-96

Legislative lobbying costs; published 6-20-96

Master subcontracting plans; published 6-20-96

National Industrial Security Program Operating Manual; published 6-20-96

Postponement of bid openings or closing dates; published 6-20-96

Predetermined indirect cost rates; published 6-20-96

Quality assurance actions; electronic screening; published 6-20-96

Quality assurance nonconformances; published 6-20-96

Quick-closeout procedures; published 6-20-96

Records retention; published 6-20-96

Solicitation provisions; contract clauses; published 6-20-96

Travel costs; published 6-20-96

SECURITIES AND EXCHANGE COMMISSION

Securities:
- Broker-dealer registration and reporting--
  - Form BDW, uniform request for withdrawal from broker-dealer registration; amendments; published 7-19-96
- Form BD amendments; published 7-18-96

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
- Cuyahoga River, OH; safety zone; published 7-19-96

TRANSPORTATION DEPARTMENT

Omnibus Transportation Employee Testing Act of 1991:
- Workplace drug testing programs; insufficient specimens; published 7-19-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- AlliedSignal Inc.; published 6-19-96
- Sikorsky; published 7-19-96

Airworthiness standards:
- Aircraft engines; new one-engine-inoperative ratings; definitions and type certification standards; rulemaking petition; published 6-19-96

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad operating rules:
- Grade crossing signal system safety; published 6-20-96

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol, tobacco, and other excise taxes:
- Taxpaid distilled spirits used in manufacturing products unfit for beverage use; published 6-20-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in California; comments due by 8-30-96; published 7-31-96

Onions grown in--
- Idaho and Oregon; comments due by 8-30-96; published 7-31-96

Potatoes (Irish) grown in--
- Idaho and Oregon; comments due by 8-28-96; published 7-29-96

Prunes (dried) produced in California; comments due by 8-30-96; published 7-31-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Japanese beetle; comments due by 8-26-96; published 6-25-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Gulf of Alaska groundfish; comments due by 8-30-96; published 7-5-96
- Gulf of Mexico reef fish; comments due by 8-30-96; published 8-15-96
- Ocean salmon off coasts of Washington, Oregon and California; comments due by 8-27-96; published 8-13-96

EDUCATION DEPARTMENT

Direct grant programs; comments due by 8-30-96; published 7-16-96

Elementary and secondary education:
- Indian fellowship and professional development programs; comments due by 8-26-96; published 7-26-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:
- Highway heavy-duty engines; emissions control; comments due by 8-26-96; published 6-27-96

Air pollution; standards of performance for new stationary sources:
- Nonmetallic mineral processing plants; comments due by 8-26-96; published 6-27-96
- Volatile organic compound (VOC) emissions--
  - Architectural coatings; comments due by 8-30-96; published 6-25-96

Air quality implementation plans; approval and promulgation; various States:
- American Samoa et al.; correction; comments due by 8-26-96; published 7-25-96
- California; comments due by 8-26-96; published 7-25-96
- Illinois; comments due by 8-26-96; published 7-25-96
- Iowa; comments due by 8-28-96; published 7-29-96
- Missouri; comments due by 8-28-96; published 7-29-96
- Pennsylvania; comments due by 8-29-96; published 7-30-96
- Tennessee; comments due by 8-28-96; published 7-29-96
- Washington; comments due by 8-26-96; published 7-25-96
- Wisconsin; comments due by 8-28-96; published 7-29-96

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Washington; comments due by 8-28-96; published 7-29-96

Clean Air Act:
- State operating permits programs--
  - New York; comments due by 8-29-96; published 7-30-96

Drinking water:
- National primary and secondary drinking water regulations--
  - Enhanced surface water treatment requirements for waterborne pathogens and viruses; comments due by 8-30-96; published 5-29-96

Hazardous waste program authorizations:
- Kansas; comments due by 8-28-96; published 7-29-96

Hazardous waste:
- Hazardous waste management system--
  - Contaminated media managed during government-overseen remedial actions; requirements; comments due by 8-28-96; published 7-1-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Acephate, etc.; comments due by 8-28-96; published 7-29-96
- Linuron; comments due by 8-26-96; published 6-26-96

Superfund program:
- National oil and hazardous substances contingency plan--
  - National priorities list update; comments due by 8-26-96; published 7-26-96
  - National priorities list update; comments due by 8-28-96; published 7-29-96
- Toxic chemical release reporting; community right-to-know--
  - Metal mining, coal mining, etc.; industry group list additions; comments due by 8-26-96; published 6-27-96

FARM CREDIT ADMINISTRATION

Farm credit system:
- Loan policies and operations--
  - Short- and intermediate-term credit; FCS (System) and non-System lenders; comments due by 8-30-96; published 7-17-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Commercial mobile radio services--
  - Enhanced 911 emergency calling systems; comments due by 8-26-96; published 8-2-96
- Interstate information services; comments due by 8-26-96; published 7-26-96
- Telecommunications Act of 1996; implementation--
  - Accounting safeguards; comments due by 8-26-96; published 8-1-96

Radio stations; table of assignments:
- Florida; comments due by 8-26-96; published 7-19-96
- Louisiana; comments due by 8-26-96; published 7-19-96
- Nevada; comments due by 8-26-96; published 7-19-96
- New Mexico; comments due by 8-26-96; published 7-19-96

Television broadcasting:

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $883.00 domestic, $220.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	[1] Jan. 1, 1996
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–028–00013–4)	17.00	Jan. 1, 1996
400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1199	(869–028–00017–7)	35.00	Jan. 1, 1996
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
1900–1939	(869–028–00020–7)	16.00	Jan. 1, 1996
1940–1949	(869–028–00021–5)	31.00	Jan. 1, 1996
1950–1999	(869–028–00022–3)	39.00	Jan. 1, 1996
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–028–00024–0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869–028–00025–8)	30.00	Jan. 1, 1996
200–End	(869–028–00026–6)	25.00	Jan. 1, 1996
10 Parts:			
0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
51–199	(869–028–00028–2)	24.00	Jan. 1, 1996
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–028–00032–1)	15.00	Jan. 1, 1996
12 Parts:			
1–199	(869–028–00033–9)	12.00	Jan. 1, 1996
200–219	(869–028–00034–7)	17.00	Jan. 1, 1996
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–028–00036–3)	21.00	Jan. 1, 1996
500–599	(869–028–00037–1)	20.00	Jan. 1, 1996
600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
13	(869–028–00039–8)	18.00	Mar. 1, 1996
14 Parts:			
1–59	(869–028–00040–1)	34.00	Jan. 1, 1996
60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–028–00043–6)	23.00	Jan. 1, 1996
1200–End	(869–028–00044–4)	16.00	Jan. 1, 1996
15 Parts:			
0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–028–00046–1)	26.00	Jan. 1, 1996
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–028–00050–9)	26.00	Jan. 1, 1996
17 Parts:			
1–199	(869–028–00052–5)	21.00	Apr. 1, 1996
200–239	(869–028–00053–3)	25.00	Apr. 1, 1996
240–End	(869–028–00054–1)	31.00	Apr. 1, 1996
18 Parts:			
1–149	(869–028–00055–0)	17.00	Apr. 1, 1996
150–279	(869–028–00056–8)	12.00	Apr. 1, 1996
280–399	(869–028–00057–6)	13.00	Apr. 1, 1996
400–End	(869–028–00058–4)	11.00	Apr. 1, 1996
19 Parts:			
1–140	(869–028–00059–2)	26.00	Apr. 1, 1996
141–199	(869–028–00060–6)	23.00	Apr. 1, 1996
200–End	(869–028–00061–4)	12.00	Apr. 1, 1996
20 Parts:			
1–399	(869–028–00062–2)	20.00	Apr. 1, 1996
400–499	(869–028–00063–1)	35.00	Apr. 1, 1996
500–End	(869–028–00064–9)	32.00	Apr. 1, 1996
21 Parts:			
1–99	(869–028–00065–7)	16.00	Apr. 1, 1996
100–169	(869–028–00066–5)	22.00	Apr. 1, 1996
*170–199	(869–028–00067–3)	29.00	Apr. 1, 1996
200–299	(869–028–00068–1)	7.00	Apr. 1, 1996
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–028–00071–1)	8.50	Apr. 1, 1996
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–028–00073–8)	14.00	Apr. 1, 1996
22 Parts:			
1–299	(869–028–00074–6)	36.00	Apr. 1, 1996
300–End	(869–028–00075–4)	24.00	Apr. 1, 1996
23	(869–028–00076–2)	21.00	Apr. 1, 1996
24 Parts:			
0–199	(869–028–00077–1)	30.00	May 1, 1996
200–219	(869–028–00078–9)	14.00	Apr. 1, 1996
220–499	(869–028–00079–7)	13.00	Apr. 1, 1996
500–699	(869–028–00080–1)	14.00	Apr. 1, 1996
700–899	(869–028–00081–9)	13.00	Apr. 1, 1996
*900–1699	(869–028–00082–7)	21.00	Apr. 1, 1996
1700–End	(869–028–00083–5)	14.00	May 1, 1996
25	(869–028–00084–3)	32.00	Apr. 1, 1996
26 Parts:			
§§ 1.0-1–1.60	(869–028–00085–1)	21.00	Apr. 1, 1996
§§ 1.61–1.169	(869–028–00086–0)	34.00	Apr. 1, 1996
§§ 1.170–1.300	(869–028–00087–8)	24.00	Apr. 1, 1996
§§ 1.301–1.400	(869–028–00088–6)	17.00	Apr. 1, 1996
§§ 1.401–1.440	(869–028–00089–4)	31.00	Apr. 1, 1996
§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869–026–00110–3)	21.00	July 1, 1995
100–499	(869–026–00111–1)	9.50	July 1, 1995
500–899	(869–026–00112–0)	36.00	July 1, 1995
900–1899	(869–026–00113–8)	17.00	July 1, 1995
1900–1910 (§§ 1901.1 to 1910.999)	(869–026–00114–6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
1911–1925	(869–026–00116–2)	27.00	July 1, 1995
1926	(869–026–00117–1)	35.00	July 1, 1995
1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–026–00119–7)	25.00	July 1, 1995
200–699	(869–026–00120–1)	20.00	July 1, 1995
700–End	(869–026–00121–9)	30.00	July 1, 1995
31 Parts:			
0–199	(869–026–00122–7)	15.00	July 1, 1995
200–End	(869–026–00123–5)	25.00	July 1, 1995
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–026–00124–3)	32.00	July 1, 1995
191–399	(869–026–00125–1)	38.00	July 1, 1995
400–629	(869–026–00126–0)	26.00	July 1, 1995
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–026–00128–6)	21.00	July 1, 1995
800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–026–00132–4)	24.00	July 1, 1995
34 Parts:			
1–299	(869–026–00133–2)	25.00	July 1, 1995
300–399	(869–026–00134–1)	21.00	July 1, 1995
400–End	(869–026–00135–9)	37.00	July 5, 1995
35	(869–026–00136–7)	12.00	July 1, 1995
36 Parts			
1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–026–00138–3)	37.00	July 1, 1995
37	(869–026–00139–1)	20.00	July 1, 1995
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–026–00143–0)	40.00	July 1, 1995
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–026–00147–2)	36.00	July 1, 1995
72–85	(869–026–00148–1)	41.00	July 1, 1995
86	(869–026–00149–9)	40.00	July 1, 1995
87–149	(869–026–00150–2)	41.00	July 1, 1995
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–026–00152–9)	17.00	July 1, 1995
260–299	(869–026–00153–7)	40.00	July 1, 1995
300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–026–00155–3)	26.00	July 1, 1995
425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–026–00159–6)	9.50	July 1, 1995
101	(869–026–00160–0)	29.00	July 1, 1995
102–200	(869–026–00161–8)	15.00	July 1, 1995
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–026–00163–4)	26.00	Oct. 1, 1995
400–429	(869–026–00164–2)	26.00	Oct. 1, 1995
430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–026–00171–5)	14.00	Oct. 1, 1995
500–1199	(869–026–00172–3)	23.00	Oct. 1, 1995
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
70–89	(869–026–00176–6)	8.50	Oct. 1, 1995
90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
200–499	(869–026–00181–2)	19.00	Oct. 1, 1995
500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
2 (Parts 201–251)	(869–026–00190–1)	17.00	Oct. 1, 1995
2 (Parts 252–299)	(869–026–00191–0)	13.00	Oct. 1, 1995
3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
7–14	(869–026–00193–6)	28.00	Oct. 1, 1995
15–28	(869–026–00194–4)	31.00	Oct. 1, 1995
29–End	(869–026–00195–2)	19.00	Oct. 1, 1995
49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995
1200–End	(869–026–00202–9)	15.00	Oct. 1, 1995
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996

Title	Stock Number	Price	Revision Date
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994
Complete set (one-time mailing)		223.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.