

Federal Register

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- 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.

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- 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



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Rules and Regulations

Federal Register

Vol. 61, No. 176

Tuesday, September 10, 1996

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AH60

Prevailing Rate Systems; Abolishment of Marion, IN, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to abolish the Marion, IN, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine the six counties having continuing FWS employment as areas of application to nearby NAF wage areas for pay-setting purposes.

DATES: This interim rule becomes effective on September 10, 1996. Comments must be received by October 10, 1996. Employees currently paid rates from the Marion, IN, NAF wage schedule will continue to be paid from that schedule until their conversion to the schedules of the wage areas to which their counties of employment are being redefined by this rule on December 13, 1996, the date that the next Marion, IN, wage schedule would have been effective.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606-0824.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 606-2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to OPM that the Marion, IN, FWS NAF wage area be abolished and that the six

counties having continuing FWS employment be redefined as areas of application to nearby NAF wage areas. Marion County, Grant County, Miami County and Allen County, IN, are being redefined to the Greene-Montgomery, OH, wage area. Martin County, IN, is being redefined to the Hardin-Jefferson, KY, wage area, and Vermilion County, IL, is being redefined to the Lake, IL, wage area. This change is necessary because the pending closure of Ft. Benjamin Harrison leaves the Marion, IN, wage area without an activity having the capability to conduct a wage survey.

As required in regulation, 5 CFR 532.219, the following criteria were considered in redefining these wage areas:

- (1) Proximity of largest activity in each county;
- (2) Transportation facilities and commuting patterns; and
- (3) Similarities of the counties in:
 - (i) Overall population;
 - (ii) Private employment in major industry categories; and
 - (iii) Kinds and sizes of private industrial establishments.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by majority vote recommended approval. The Committee defeated the labor members' motion that the original management recommendation be amended to redefine Allen, Grant, and Miami Counties to the Lake, IL, wage area and thereby avoid placing an estimated two employees on pay retention. Allen, Grant, and Miami Counties have greater similarities to the Lake, IL, wage area in an overall population and employment comparison. However, the degree to which those factors favor Lake, IL, is not strong enough to be determinative given the significant distance of Allen and Grant Counties from Lake, IL, as well as the general homogeneity of the counties in their relationship to the Greene-Montgomery, OH, wage area.

Differences in commuting patterns were found to be insignificant for all county redefinitions. The remaining factors favored the redefinition of Vermilion County to the Lake, IL, wage area. Martin County is far closer to the Hardin-Jefferson, KY, wage area than to the very distant Lake, IL, wage area, which offsets the greater similarities to the latter in employment and population. Similarly, Marion County is

significantly closer to the Greene-Montgomery, OH, wage area than to the Hardin-Jefferson, KY, wage area, which, on balance, offsets the employment and population numbers that favored the latter.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days so that preparations otherwise required for the October 1996 Marion, IN, NAF wage area survey may be canceled.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532 [Amended]

2. In appendix B to subpart B, the listing for the State of Indiana is amended by removing the entry for Marion.

Appendix D to Subpart B of Part 532 [Amended]

3. Appendix D to subpart B is amended by removing the wage area listing for Marion, IN, and by revising the listings for Greene-Montgomery, OH; Hardin-Jefferson, KY; and Lake, IL, to read as follows:

Appendix D to Subpart B of Part 532—
Nonappropriated Fund Wage and
Survey Areas

* * * * *

Illinois Lake Survey Area

Illinois:
Lake

Area of application. Survey area plus:

Illinois:
Cook
Vermilion (Effective date December 13, 1996)

Michigan:
Dickinson
Marquette

Wisconsin:
Dane
Milwaukee

* * * * *

Kentucky

* * * * *

Hardin-Jefferson Survey Area

Kentucky:
Hardin
Jefferson

Area of application. Survey area plus:

Indiana:
Jefferson
Martin (Effective date December 13, 1996)

Kentucky:
Fayette
Madison
Warren

* * * * *

Ohio

* * * * *

Greene-Montgomery Survey Area

Ohio:
Greene
Montgomery

Area of application. Survey area plus:

Indiana:
Allen (Effective date December 13, 1996)
Grant (Effective date December 13, 1996)
Marion (Effective date December 13, 1996)
Miami (Effective date December 13, 1996)

Ohio:
Clinton
Franklin
Hamilton
Licking
Ross

West Virginia:
Raleigh
Wayne

* * * * *

[FR Doc. 96-23041 Filed 9-9-96; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

**Animal and Plant Health Inspection
Service**

7 CFR Part 301

[Docket No. 96-001-2]

Corn Cyst Nematode

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the regulations that quarantine certain areas of the United States because of the corn cyst nematode and that restrict the interstate movement of certain articles, such as soil, from the quarantined areas. This action is warranted because this pest is present in only five counties in two States and appears to be adequately contained by the two States affected. This action will relieve restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne O'Hern, Assistant Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1228, (301) 734-8247; or e-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Corn cyst nematode (*Heterodera zeae*) is a cyst-forming nematode that attacks the roots of host plants such as corn, barley, oats, and sorghum. The nematode bores into the roots of the plants and feeds on the plant juices, resulting in poor root development and poor plant growth and potentially causing severe crop losses. The corn cyst nematode is spread through the movement of infested soil and equipment carrying infested soil.

The regulations in 7 CFR 301.90 through 301.90-10 designate areas that are quarantined because of the presence of corn cyst nematode. These regulations also restrict the interstate movement of soil and other articles from the quarantined areas to prevent the spread of corn cyst nematode.

On July 16, 1996, we published in the Federal Register (61 FR 37018-37019, Docket No. 96-001-1) a proposal to remove the regulations that quarantine certain areas of the United States because of the corn cyst nematode and that restrict the interstate movement of certain articles, such as soil, from the quarantined areas.

We solicited comments concerning our proposal for 30 days ending August

15, 1996. We received one comment by that date. It was from a State Department of Agriculture. The response was in favor of the provisions outlined in the proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule change is not expected to have an effect on any small entities. This is because the States of Maryland and Virginia have restrictions in place to prevent the movement of potentially infested articles from the infested areas in Cecil, Harford, Kent and Queen Anne's Counties, MD, and Cumberland County, VA.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. With the adoption of this rule: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—[AMENDED]

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

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

**Subpart—Corn Cyst Nematode
[Removed and Reserved]**

2. Subpart—Corn Cyst Nematode, consisting of §§ 301.90 and 301.90–1 through 301.90–10, is removed and reserved.

Done in Washington, DC, this 3rd day of September 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22942 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 301

[Docket No. 91–155–20]

**Mediterranean Fruit Fly; Removal of
Quarantined Areas**

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mediterranean fruit fly regulations by removing the quarantined areas in Los Angeles, Orange, and San Bernardino Counties, CA, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from these areas and that restrictions on the interstate movement of regulated articles from these areas are no longer necessary. As a result of the interim rule, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

EFFECTIVE DATE: Interim rule was effective on June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:**Background**

In an interim rule effective June 14, 1996, and published in the Federal Register on June 19, 1996 (61 FR 31003–31004, Docket No. 91–155–19), we amended the Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10) by removing the quarantined areas in Los Angeles, Orange, and San Bernardino Counties, CA, from the list of quarantined areas in § 301.78–3(c). That action relieved unnecessary restrictions on the interstate movement of regulated articles from these areas. Also, as a result of that action, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

Comments on the interim rule were required to be received on or before August 19, 1996. We did not receive any comments by that date. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

**PART 301—DOMESTIC QUARANTINE
NOTICES**

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301 and that was published at 61 FR 31003–31004 on June 19, 1996.

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 3rd day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22940 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 319

[Docket No. 95–068–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing, under certain conditions, the cold treatment of imported fruit upon arrival at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS. We have determined that there are biological barriers at these ports that, along with certain safeguards, prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruit before undergoing cold treatment. We are also requiring that cold treatment facilities at the port of Wilmington, NC, remain locked during non-working hours. These actions will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

SUPPLEMENTARY INFORMATION:**Background**

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56–8 (referred to below as “the regulations”), prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperature and time requirements vary according to the type of fruit and the pests involved. Detailed cold treatment procedures may be found in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the regulations at 7 CFR 300.1.

On April 29, 1996, we published in the Federal Register (61 FR 18690–18695, Docket No. 95–068–1) a proposal

to amend the regulations by allowing cold treatment of imported fruit upon arrival at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS.

We solicited comments concerning our proposal for 60 days ending June 28, 1996. We received 10 comments by that date. They were from customs brokers, industry representatives, and representatives of State governments. Six commenters supported the proposed rule in its entirety. The remaining four commenters had concerns about portions of the proposed rule. Their concerns are discussed below by topic.

The Maritime Port of Seattle, WA

Two commenters recommended that, in addition to the special conditions outlined for the maritime port of Seattle, WA, in the proposed rule, we also require contingency plans and trap monitoring at this port, as we proposed to require for the airports of Atlanta, GA, and Seattle, WA, and for the port of Gulfport, MS, to reduce further the slight possibility that a fruit fly could escape from the cold treatment facility and could, particularly during summer months, find a suitable microhabitat for colonization. We agree that contingency plans and trap monitoring at the maritime port of Seattle, WA, will help prevent the introduction and establishment of fruit flies near the port, as they will at the other ports.

Therefore, we are adding the following special conditions to cold treatment at the maritime port of Seattle, WA:

1. Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

This condition will act as a general safeguard. We are requiring this condition as an extra layer of defense that will trap any fruit flies within the facility or within the facility's environs, in the unlikely event that a fruit fly manages to survive past the stage of pupation in the cold treatment facility.

2. The cold treatment facility must have contingency plans, approved by the Deputy Administrator of Plant Protection and Quarantine (PPQ), for handling fruit, including the ability to destroy or dispose of fruit safely.

This condition will ensure that, in the event that a shipment cannot be cold treated promptly or properly, the contents of the shipment can be safely treated by alternative means, destroyed, or disposed of so that fruit flies and other insect pests will not have the opportunity to escape. Examples of adequate contingency plans include the

ability to incinerate fruit, to bury fruit, or to re-export fruit.

These additional special conditions, along with the conditions outlined in the proposed rule for the maritime port of Seattle, WA, will help prevent the introduction and establishment of fruit flies and other insect pests in the unlikely event that they escape from shipments of fruit before undergoing cold treatment at the maritime port of Seattle, WA.

The Airport of Atlanta, GA, and the Maritime Port of Gulfport, MS

One commenter expressed concern about the temperate climates in which the airport of Atlanta, GA, and the maritime port of Gulfport, MS, are located. We recognize that these ports are located in areas that experience warmer winter temperatures than the other areas where cold treatment is conducted. However, these ports are not located near commercial citrus-growing areas or other substantial sources of fruit fly host material. We believe that the safeguards outlined in the proposed rule are sufficient to prevent the introduction and establishment of fruit flies and other insect pests from shipments of fruit and vegetables intended for cold treatment. Therefore, we are making no changes to the proposed rule in response to this comment.

Bulk Shipments

One commenter suggested that we prohibit bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit and vegetables intended for cold treatment into the maritime port of Seattle, WA, and the airports of Seattle, WA, and Atlanta, GA. The commenter recommended that we instead require that all shipments entering these ports for cold treatment be packed in containers in order to keep the fruit chilled, limit any exposure to the outdoors, prevent leakage, and serve as a physical barrier to fruit fly escape.

Based on our experience enforcing the regulations, it is extremely rare, particularly at an airport, for shipments of fruit to wait for extended periods of time for cold treatment. Shipments normally move very quickly from the vessel or airplane into the cold treatment facility for treatment. To help ensure prompt treatment of shipments, we require that at all ports approved as locations for cold treatment, advance reservations for cold treatment space be made prior to the departure of a shipment from its port of origin. This condition ensures the expeditious cold treatment of the fruit, limits the

shipment's exposure to the outdoors, reduces the likelihood of leakage from a shipment, and minimizes the risk of fruit flies maturing in deteriorating fruit. In addition, though we are allowing bulk shipments of fruit intended for cold treatment to enter the maritime port of Seattle, WA, and the airports of Seattle, WA, and Atlanta, GA, we are requiring these bulk shipments to arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies. We believe that this condition, and the other special conditions for these ports, are sufficient to ensure that shipments that arrive at these ports in cases or bins will not be exposed in such a manner as to allow fruit flies or other insect pests to escape from a shipment. Therefore, we are making no changes to the proposed rule in response to this comment.

Security Measures

One commenter recommended that our proposed security measures for all of the ports be expanded. The commenter suggested that each cold treatment facility have security cameras, that each shipment of fruit be accompanied by APHIS personnel, and that each person living within a 4-mile radius of the cold treatment facility be notified that the facility is holding fruit that may contain exotic plant pests.

We developed special conditions for cold treatment at each port proposed as an approved location for cold treatment so that there would be a multi-layered defense against the escape of fruit flies or other insect pests from shipments of fruit intended for cold treatment. These special conditions are reinforced by the standard requirements for cold treatment, located at § 319.56-2d of the regulations, at all ports that are approved locations for cold treatment. The standard requirements, among other things, require that shipments of fruit intended for cold treatment in the United States must arrive in the United States at a temperature sufficiently low to prevent insect activity and then must be promptly pre-cooled and refrigerated in the approved cold storage warehouse where cold treatment will occur. In addition, the standard requirements provide that fruit intended for cold treatment in the United States be delivered under the supervision of an inspector of PPQ, APHIS, to the approved cold storage warehouse where cold treatment will occur. APHIS officials monitor shipments of fruit intended for cold treatment in the United States through inspections of the shipments at the port of entry and through inspections of the automatic, continuous temperature records

required for each refrigeration. At ports where special conditions apply to cold treatment, APHIS officials monitor adherence to required safeguards as well. Consequently, we feel that we have the necessary security measures in place to prevent the introduction of exotic plant pests into the United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Cold Treatment

One commenter stated that the United States should not allow the cold treatment of foreign fruits and vegetables within its borders because of the pest risk to American crops. The same commenter expressed concern that allowing additional ports to be locations for cold treatment would require extra APHIS resources that may not be available. The commenter suggested that we require the costs of cold treatment, including the staffing and operation of the cold treatment facility, to be borne by the exporting party.

Based on our experience enforcing the regulations, we believe that we have the necessary safeguards in place to conduct cold treatment in the United States without presenting an unnecessary risk of the introduction or establishment of exotic plant pests.

Further, we have adequate personnel and other resources at the ports proposed as approved locations for cold treatment to conduct careful monitoring of cold treatment operations and to ensure that the provisions of the regulations are upheld. Regarding the costs of cold treatment, it is routine for importers of fresh fruit to bear the expense of cold treatment. Therefore, we are making no changes to the proposed rule in response to these comments.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this final rule on small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151-167), the

Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This rule amends the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the cold treatment of imported fruits upon arrival at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. Modern cold treatment facilities have been or are in the process of being constructed at each of these ports. This action will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received no comments on the Initial Regulatory Flexibility Analysis contained in the proposed rule.

Approximately 585.4 million kilograms of fresh fruits and vegetables were imported into the United States through the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA, during fiscal year 1994. The port of Gulfport, MS, handled about 98 percent of the total fresh fruit and vegetable imports for these ports. The ports of Atlanta, GA, and Seattle, WA, handled 0.25 and 1.75 percent, respectively, of the total fresh fruit and vegetable imports for these three ports. During fiscal year 1994, approximately 550,330 kilograms (less than one-tenth of one percent) of the total fresh fruit imports for these ports were cold treated in the country of origin or in transit to the United States and will be eligible for cold treatment upon arrival in the United States. We expect that an additional 20 million kilograms of new and rerouted fresh fruits will be imported through and cold treated at these ports each year.

According to the Small Business Administration, a "small" entity involved in the wholesale trade of fresh fruits is one that employs no more than 100 people. Currently, there are 4,388 "small" wholesale importers of fresh fruits in the United States. Use of on-site cold treatment facilities at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, may slightly reduce transportation costs for foreign fruit exporters, which, in turn, may slightly reduce transportation costs for domestic importers and, ultimately, may slightly reduce the cost of certain fruits for U.S.

consumers. We expect, however, that these reductions in costs will be insignificant.

The alternative to this rule was to make no changes in the regulations. After consideration, we rejected this alternative because it appears that, with the safeguards contained in this rule, the cold treatment of fruit may be conducted at any of the listed ports without significant risk of introducing fruit flies or other injurious plant pests.

Executive Order 12988

This rule allows cold treatment of certain imported fruits to be conducted at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. State and local laws and regulations regarding the importation of fruits under this rule will be preempted while the fruits are in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 319.56-2d is amended as follows:

a. In paragraph (b)(1), by revising the second sentence to read as set forth below.

b. By revising paragraph (b)(5)(iv) to read as set forth below.

c. By adding new paragraphs (b)(5)(v), (b)(5)(vi), and (b)(5)(vii) to read as set forth below.

§ 319.56-2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

(b) * * *

(1) * * * If not so refrigerated, the fruit must be both precooled and refrigerated after arrival only in cold storage warehouses approved by the Deputy Administrator and located at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

* * * * *

(5) * * *

(iv) *Special requirements for the maritime port of Wilmington, NC.* Shipments of fruit arriving at the maritime port of Wilmington, NC, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit must be cold-treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(v) *Special requirements for the maritime port of Seattle, WA.* Shipments of fruit arriving at the

maritime port of Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit must be cold-treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(E) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(F) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

(vi) *Special requirements for the airports of Atlanta, GA, and Seattle, WA.* Shipments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk and containerized shipments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit arriving for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of shipments from aircraft to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(D) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(E) The cold treatment facility must remain locked during non-working hours.

(F) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(G) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

(vii) *Special requirements for the port of Gulfport, MS.* Shipments of fruit arriving at the port of Gulfport, MS, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) All fruit entering the port for cold treatment must move in maritime containers. No bulk shipments (those shipments which are stowed and unloaded by the case or bin) are permitted at the port of Gulfport, MS.

(B) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(C) All shipments of fruit arriving at the port for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(D) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of shipments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(E) Advance reservations for cold treatment space at the port must be made prior to the departure of a shipment from its port of origin.

(F) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(1) All containers must be unloaded within the cold treatment facility; and

(2) Untreated fruit may not be exposed to the outdoors under any circumstances.

(G) The cold treatment facility must remain locked during non-working hours.

(H) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(I) During cold treatment, a backup system must be available to cold treat the shipments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(J) The cold treatment facility must have the ability to conduct methyl bromide fumigations on-site.

(K) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

* * * * *

3. In § 319.56-2x(b), the first sentence is revised to read as follows:

§ 319.56-2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

(b) If treatment has not been completed before the fruits and vegetables arrive in the United States, fruits and vegetables listed above and requiring treatment for fruit flies may arrive in the United States only at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

Done in Washington, DC, this 3rd day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96-22941 Filed 9-9-96; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 240

[INS No. 1612-93]

RIN 1115-AE43

Removal of Obsolete Sections of the Regulation Concerning Temporary Protected Status for Salvadorans

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Immigration and Naturalization Service (Service) regulations by removing those sections relating to Temporary Protected Status (TPS) for Salvadorans under section 303 of the Immigration Act of 1990 (IMMACT). Since the TPS program for Salvadorans expired on June 30, 1992, this action is necessary to remove obsolete language from the Service's regulations.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Chirlin, Adjudications Officer, Residence and Status Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington DC, 20536, Telephone: (202) 514-5014.

SUPPLEMENTARY INFORMATION:

Background

Section 302 of the Immigration Act of 1990 (IMMACT), Public Law 101-649, dated November 29, 1990, added section 244A of the Immigration and Nationality Act (Act), establishing Temporary Protected Status (TPS) relief. Upon designation of a foreign state by the Attorney General, TPS affords temporary protection and work authorization in the United States to eligible individuals from a designated foreign state that is experiencing ongoing armed conflict, environmental disaster, or other harmful conditions that would prevent such individuals from returning to that state in safety.

In addition to the general procedures governing TPS under section 244A of the Act, section 303 of IMMACT afforded such protection specifically to nationals of El Salvador for an 18-month period ending on June 30, 1992. The special TPS program for Salvadorans included some special limitations and requirements which were implemented in 8 CFR 240.40 through 240.47. These special procedures for Salvadorans included additions or exceptions to the general TPS procedures in 8 CFR 240.1 through 240.20. The Service published

both the general and the specific Salvadoran TPS regulations in the Federal Register as an interim rule on January 7, 1991, at 56 FR 618 and as a final rule on May 22, 1991, at 56 FR 23491.

Under section 303 of IMMACT, TPS designation for El Salvador was to expire on June 30, 1992, unless the Attorney General extended the designation. On June 26, 1992, the Commissioner of the Service announced in the Federal Register at 57 FR 28700 that Salvadoran TPS designation would not be extended.

Although Salvadoran TPS expired, many of the Salvadoran TPS registrants became eligible to apply for a 1-year program of deferred enforced departure (DED) established by presidential order through the June 26, 1992, Federal Register notice. By a Federal Register notice published June 8, 1993, at 58 FR 32157, the Service further extended DED until December 31, 1994, as directed by President Clinton. The Service subsequently extended until April 30, 1996, the DED-related work authorization of Salvadorans whose DED registration expired on December 31, 1994, by a series of Federal Register notices concluding on January 30, 1996, at 61 FR 3053.

Under a court-approved settlement in a lawsuit captioned *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (*ABC*), eligible TPS and DED Salvadorans are entitled to a *de novo* asylum adjudication. The Service will begin to schedule *ABC* class members for asylum interviews on a routine basis.

The Salvadoran TPS program expired on June 30, 1992. The Service therefore finds it appropriate to remove the obsolete regulations concerning the expired Temporary Protected Status program for Salvadorans.

Impact of Removal of Obsolete Sections of the Regulation

The removal of obsolete sections of the regulation will streamline the regulations and decrease confusion. The Service will continue to inform all former Salvadoran TPS registrants who inquire that the program has expired and that they are not eligible for further registration or work authorization under that program.

Basis for Removal of Obsolete Sections of the Regulation Without Advance Notice or Provision for Public Comments

The Service's implementation of this rule as a final rule without advance notice or provision for public comment procedures is based upon the "good

cause" exception found at 5 U.S.C. 553 (b) and (d). The reasons for immediate final publication of this rule without provision for public comment are as follows:

The Service is removing language in the regulations which relates only to the specific statutory Salvadoran TPS program which expired on June 30, 1992. As the Salvadoran TPS reregistration period and TPS program both expired on that date, all such applications have been adjudicated and any further applications are inappropriate. The continued presence of this obsolete language serves no function and advance notice and public comment procedures are therefore unnecessary.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because it merely removes language which implemented an expired statutory provision.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation 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, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 240

Administrative practice and procedure, Immigration.

Accordingly, part 240 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

1. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note.

2. Part 240 is amended by removing the heading for Subpart A.

3. Part 240 is amended by removing Subpart B.

Dated: July 11, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96-23034 Filed 9-9-96; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 264

[INS No. 1606-94; AG ORDER No. 2053-96]

RIN 1115-AC83

Addition of Provision for the Registration and Fingerprinting of Nonimmigrants Designated by the Attorney General; Removal of the Requirement for the Registration and Fingerprinting of Certain Nonimmigrants Bearing Iraqi and Kuwaiti Travel Documents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published by the Immigration and Naturalization Service (Service) in the Federal Register on December 23, 1993, which added the provision for the registration and fingerprinting of certain nonimmigrants of specific countries designated by the Attorney General. The interim rule also removed the requirement for the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents who applied for admission to the United States, which was promulgated in response to a specific political situation. This action will continue to afford the Attorney General with the flexibility to facilitate implementation of the fingerprinting requirement when future political situations arise which threaten the national security of the United States.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Jake Achterberg, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW, Room 7228, Washington, DC, 20536, telephone (202) 514-3019.

SUPPLEMENTARY INFORMATION: On January 16, 1991, a final rule was published in the Federal Register, at 56 FR 1566, adding a new § 264.3 of Title 8 of the Code of Federal Regulations, requiring the registration and fingerprinting of certain nonimmigrants

bearing Iraqi and Kuwaiti travel documents. The requirement was promulgated in response to the United States condemnation of Iraq's invasion of Kuwait, United States sanctions against Iraq, and the theft of thousands of Kuwaiti passports during Iraq's occupation of Kuwait, all of which heightened the potential for domestic anti-United States terrorist activities. Due to the withdrawal of Iraqi forces from Kuwait, and the Government of Kuwait's requirement that all old Kuwaiti passports be replaced with a new version, this requirement was no longer necessary and was removed by an interim rule which was published in the Federal Register on December 23, 1993, at 58 FR 68024.

To address future political situations which elevate concern for United States' security and would require the registration and fingerprinting of certain nonimmigrants, the interim rule also added a provision allowing the Attorney General to designate, by public notice published in the Federal Register, certain nonimmigrants of specific countries to be registered and fingerprinted upon arrival in the United States, pursuant to section 263(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1303(a)(5).

The provision was necessary to afford the Attorney General with the flexibility to facilitate implementation of the fingerprinting requirement when responding to specific political situations that threatened the security of the United States. Elsewhere in the same issue of the December 23, 1993, Federal Register, the Service published a notice requiring certain nonimmigrants from Iraq and the Sudan to be registered and fingerprinted upon arrival in the United States. This action was taken in response to increased concern for national security resulting from terrorist attacks and uncovered plots directed by nationals of Iraq and Sudan.

The interim rule requested that comments concerning the new provisions be submitted to the Service by January 24, 1994. The Service did not receive any comments and is therefore adopting the interim rule as final without change.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule merely affects a limited number of individuals.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 264, which was published in the Federal Register on December 23, 1993, at 58 FR 68024-68025, is adopted as a final rule without change.

Dated: September 3, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96-22964 Filed 9-9-96; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 54**

[Docket No. 96-042-1]

Scrapie Indemnification Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the scrapie regulations by removing provisions describing the scrapie indemnification program. The scrapie indemnification program provided financial compensation to flock owners for certain animals destroyed because of scrapie. As provided in the regulations, this indemnity program was available for only a limited time, and has now been discontinued. This action will remove provisions that are no longer in effect from the regulations.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Harpster, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231, (301) 734-4913; or e-mail: dharpster@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:**Background**

The regulations in 9 CFR part 54 (referred to below as the regulations) include provisions for the payment of Federal indemnity to owners of certain sheep and goats destroyed because of scrapie. The scrapie indemnification program was established in a final rule published on December 9, 1992 (57 FR 58130-58133) and effective on January 8, 1993. As explained in the regulations, the program was offered for a limited time only; applications were required to be received on or before July 7, 1993.

Because this program has ended, we are amending the regulations to remove the provisions concerning the scrapie indemnification program. These provisions are contained in subpart A, §§ 54.2 through 54.6.

This action is not a substantive change to the regulations. It simply removes provisions related to a program that has been terminated. Therefore, pursuant to the administrative provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register. Further, this action is not a rule or regulatory action as defined by either Executive Order 12866 or the Regulatory Flexibility Act, and is, therefore, exempt from those provisions. This action contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

Accordingly, 9 CFR part 54 is amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, and 134a-134h; 7 CFR 2.22, 2.80, and 371.2(d).

2. Subpart A of part 54, consisting of §§ 54.2 through 54.6, is removed and reserved.

Done in Washington, DC, this 4th day of September 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96-23053 Filed 9-9-96; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Parts 71 and 75

[Docket No. 96-040-1]

CEM; Remove Interstate Movement Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are removing the regulations governing the interstate movement of horses affected with or exposed to contagious equine metritis. The last areas of the United States quarantined for contagious equine metritis were removed from quarantine in 1987. The disease has not been known to exist in this country since that time, and the regulations are no longer in use. We are also adding contagious equine metritis to a list of diseases not known to exist in the United States. **DATES:** This rule will be effective on November 12, 1996 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before October 10, 1996.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 96-040-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your submission refers to Docket No. 96-040-1. Submissions 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 and notices are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Tim Cordes, Senior Staff Veterinarian,

National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-3279.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR subchapter C (parts 70 through 89) govern the interstate movement of animals, including poultry, and animal products. Part 71 includes general provisions related to the interstate movement of animals and poultry. Part 75 pertains to the interstate movement of animals affected with communicable diseases of horses, asses, ponies, mules, and zebras. Sections 75.5 through 75.7 and 75.10 (referred to below as the regulations) pertain to contagious equine metritis (CEM), a highly contagious acute venereal disease that affects breeding and fertility.

When first promulgated, the CEM regulations quarantined certain areas of the United States and restricted the interstate movement of horses and other Equidae from those areas. However, in an interim rule of March 11, 1987 (52 FR 7403-7405), we removed the provisions that quarantined the last areas of the United States because of CEM. The interim rule was affirmed on July 29, 1987 (52 FR 28239-28240). CEM has not been known to exist in the United States since that time, and the regulations are no longer in use. Because the quarantine and accompanying restrictions on interstate movement are no longer necessary, we are removing the regulations in §§ 75.5 through 75.7 and § 75.10.

We are also adding a reference to CEM to part 71. Section 71.3 generally prohibits the interstate movement of diseased animals. Section 71.3(b) lists diseases not known to exist in the United States and prohibits the interstate movement of animals affected with any of the listed diseases. Because CEM is not known to exist in the United States, we are adding this disease to the list in § 71.3(b). Therefore, in the event CEM is again found to exist in the United States, spread of the disease could immediately be curtailed because interstate movement of affected animals would be prohibited.

Effective Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the Federal Register unless we receive written adverse

comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the Federal Register.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the Federal Register withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the Federal Register, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule removes regulations governing the interstate movement of horses affected with or exposed to CEM. The last areas of the United States quarantined because of this disease were removed from quarantine in 1987, and the disease has not been known to exist in this country since that time. As a result, none of the regulatory provisions regarding CEM have been imposed upon any entities large or small for at least 9 years.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 71 and 75 are amended as follows:

PART 71—GENERAL PROVISIONS

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

Authority: 21 U.S.C. 111-113, 114a, 114a-1, 115-117, 120-126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 71.3 [Amended]

2. In § 71.3, paragraph (b) is amended by adding the words "contagious equine metritis," after the word "dourine,".

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

3. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, and 134-134h; 7 CFR 2.22, 2.80, and 371.2(d).

§§ 75.5, 75.6, 75.7, and 75.10 [Removed and Reserved]

4. Sections 75.5 through 75.7 and 75.10 are removed and reserved.

Done in Washington, DC, this 4th day of September 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96-23052 Filed 9-9-96; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Replacement and Modification Parts: "Standard" Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: The FAA has traditionally interpreted the term "standard parts," as used in regulations concerning the production of replacement and modification parts for sale for installation of type certificated (TC) products, to include a basic structural or mechanical part the specification for which has been published by a standard setting organization or by the U.S. government. This document solicits public comment on including other kinds of parts, for example discrete electrical or electronic component parts.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Comments must be mailed or delivered in duplicate to: Federal Aviation Administration, Aircraft Engineering Division, AIR-100 Rm. 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. AIR-100-9601. Comments may be inspected on weekdays except Federal holidays, between 9 a.m. and 4 p.m. in room 815.

FOR FURTHER INFORMATION CONTACT: Bruce Kaplan, Aerospace Engineer, Aircraft Engineering Division, AIR-100, FAA, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-9588.

SUPPLEMENTARY INFORMATION: Section 21.303(a) of Title 14 of the Code of Federal Regulations (CFR) (§ 21.303(a)), Replacement and Modification Parts, prohibits a person from producing a part for sale for installation on a type certificated product unless that person produces the part pursuant to an FAA Parts Manufacturer Approval (PMA). Section 21.303(b) provides four exceptions to the requirement in §21.303(a). One of these exceptions is for "Standard parts (such as bolts and nuts) conforming to established industry

or U.S. specifications." (14 CFR § 21.303(b)(4).)

"Standard part" is not otherwise defined in Title 14. Section 21.303(b)(4) has come to be understood by the aviation and manufacturing public as meaning a part, the specification for which has been published by a standard setting organization or by the U.S. government, and the FAA has traditionally regulated parts production with that understanding. Examples of such "traditional" standard part specifications include National Aerospace Standards (NAS), Air Force-Navy Aeronautical Standard (AN), Society of Automotive Engineers (SAE), SAE Aerospace Standard (AS), and Military Standard (MS). The FAA will continue to consider parts conforming to these specifications as standard parts.

Traditionally, for any specification to be acceptable it must include information on the design, materials, manufacture, and uniform identification requirements. The specification must include all the information necessary to produce the part and ensure its conformity to the specification. Furthermore, the specification must be publicly available, so that any party is capable of manufacturing the part. The above examples of accepted specifications fulfill those criteria.

In the past the FAA has applied § 21.303(b)(4) to parts that have specifications where a determination of physical conformity to a design could be made. This application largely excluded classes of parts where the parts are conformed not on the basis of their physical configuration but by meeting the specified performance criteria. These types of parts are best exemplified by discrete electrical and electronic parts.

Much of the componentry used in electronic devices are manufactured under standard industry practices, often to published specifications developed by standards organizations such as the Society of Automotive Engineers (SAE), the American Electronics Association, Semitec, Joint Electron Device Engineering Council, Joint Electron Tube Engineering Council, and the American National Standards Institute (ANSI). Such standards development by these bodies is overseen by the Institute of Electrical and Electronics Engineers (IEEE), the IEEE Standards Committee, as well as the electrical and electronics industry, at large, who depends upon characteristic design standards for consistency in operation and performance.

The FAA is aware of certain kinds of parts that may fit within the limits of

the § 21.303(b)(4) exception; these might include resistors, capacitors, diodes, transistors, and non-programmable integrated circuits (e.g. amplifiers, bridges, switches, gates, etc.). Conversely, large scale, application-specific, or programmable integrated circuits, hybrids, gate arrays, memories, CPU's, or other programmable logic devices would not be considered standard parts. Such components are not "discretes" since they require programming that controls their timing, functionality, performance, and overall operating parameters.

It is important to remember that 14 CFR Part 21 § 21.303 deals with the production of parts for sale for installation on type certificated products. The installation of an owner- or operator-produced, technical standard order, and standard parts must be shown to comply with part 43 of Title 14 of the CFR (Part 43). Installation eligibility for a PMA or a type or production certificated (PC) part is established at the time of issuing the production approval, nevertheless, a person may install a PMA, TC, or PC part on another TC product if that installation is shown to comply with Part 43. Generally, a standard part may be replaced with an identical standard part without a further demonstration of compliance with the airworthiness regulations. Substitution of a standard part with another would require a demonstration of acceptability in accordance with Part 43.

The FAA invites comments on the ability of producers to conform discrete electrical and electronic parts, and other kinds of parts, to specified performance criteria. It also invites comments on the ability of producers to distinctly identify such parts.

After comments are reviewed, the FAA anticipates taking the following actions:

(1) Compile a list of standard setting bodies and U.S. government entities that establish specifications for standard parts, and

(2) Publish these listings in an Advisory Circular which will be available on the Aircraft Certification Home Page on the World Wide Web.

Issued in Washington, DC, of August 29, 1996.

Elizabeth Yoest,

Deputy Director, Aircraft Certification Service, AIR-2.

[FR Doc. 96-23092 Filed 9-9-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71**[Airspace Docket No. 96-ANE-28]****Amendment to Class E Airspace;
Lebanon, NH****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace at Lebanon, NH (LEB) by removing the Class E airspace extending upward from the surface, effective during the times when the Airport Traffic Control Tower (ATCT) is not operating. This action results from the elimination of continuous weather reporting at Lebanon Municipal Airport.

DATES: Effective 0901 UTC, November 7, 1996.

Comments for inclusion in the Rules Docket must be received on or before October 10, 1996.

ADDRESSES: Send comments on the proposal to: Manager, Operations Branch, ANE-530, Federal Aviation Administration, Docket No. 96-ANE-28, 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-comment@mail.hq.faa.gov". Comments must indicate Docket No. 96-ANE-28 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: Raymond Duda, Operations Branch, ANE-530.3, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7533; fax (617) 238-7596.

SUPPLEMENTARY INFORMATION: On May 16, 1994, the FAA published a modification to the Class D airspace at Lebanon Municipal Airport, Lebanon, NH (59 FR 25299, effective June 23, 1994) to reflect a change in the operating hours for the Airport Traffic Control Tower (ATCT) at Lebanon. Although the ATCT no longer operates continuously, 24-hour weather reporting remained, thus the FAA also established a Class E airspace area extending

upward from the surface at Lebanon. That Class E airspace, effective during the hours when the ATCT did not operate, provides controlled airspace from the surface upward based on the availability of continuous weather reporting from Lebanon.

The FAA has been advised that continuous surface weather observations are no longer provided at Lebanon. Recently, officials from the FAA, the National Weather Service (NWS), and the aviation industry concluded a comprehensive reassessment of the requirements for surface weather observations at the nation's airports, from completely automated to sites with automated equipment augmented by various levels of observer support. In addition, the FAA has started the process to assume responsibility for aviation surface weather observations as the NWS automates field offices and reallocates its observers. Under this program, the FAA has selected Lebanon, NH as a site for fully automated weather observations using the Automated Surface Observing System (ASOS).

The commissioning the Lebanon ASOS is not expected, however, until late 1997, and continuous observer support has already ended. Accordingly, the FAA must remove the Class E airspace area that extended upward from the surface during the times when the ATCT does not operate. This action does not affect the Class E airspace area that extends upward from 700 feet above the surface, which remains in place to provide adequate controlled airspace for those aircraft using the standard instrument approach procedures at Lebanon when the ATCT is closed.

Class E airspace designations for airspace areas extending upward from the surface of the earth are published in paragraph 6002 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from this Order.

The Direct Final Rule Procedures

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 published 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-28." 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 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ANE ME E2 Lebanon, NH [Removed]

* * * * *

Issued in Burlington, MA, on August 26, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–23091 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Cooperation With User Organizations

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: On June 22, 1951, the Forest Service published rules authorizing organizations that use National Forest System lands to form permittee associations or advisory boards for cooperating with the Forest Service. In subsequent years, these rules have been superceded by other laws and procedures that have been established to address how the agency works cooperatively with user organizations. The agency identified the need to remove this obsolete regulation during a review of regulations undertaken as part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: This rule is effective September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Anderson, Directives and Regulations, telephone: (703) 235–2994.

SUPPLEMENTARY INFORMATION: Under the authority of the Organic Administrative Act of June 4, 1897 (16 U.S.C. 551), the Secretary of Agriculture promulgated regulations at 36 CFR 211.1 on June 22, 1951 (16 FR 5952), establishing procedures for user organizations to work with the Forest Service in the "systematic betterment of conditions and facilities controlling their use of the national forest lands." In subsequent years, new laws have been passed which govern how the agency works with user organizations, such as the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 2) and the National Forest Management Act of 1976 (16 U.S.C. 1604).

Following a review of Forest Service regulations under the President's Regulatory Reinvention Initiative, the agency identified this regulation as no longer needed, and accordingly, by this amendment, is removing the rule from the Code of Federal Regulations. Because of the narrow scope and limited effect of this action, the agency has determined that this amendment is a technical amendment for which notice and comment pursuant to the Administrative Procedures Act (5 U.S.C. 553) is not necessary.

Regulatory Impact

This rule is a technical amendment to remove an obsolete regulation and, as such, has no substantive effect nor is it subject to review under USDA procedures or Executive Order 12866 on Regulatory Planning and Review. This rule also does not meet the definition of a rule subject to Congressional notice and review pursuant to 5 U.S.C., sections 801–804.

Moreover, because good cause exists to exempt this rule from notice and comment pursuant to 5 U.S.C. 553, this rule is exempt from further analysis under the Unfunded Mandates Reform Act at 1995; Executive Order 12778, Civil Justice Reform; Executive Order 12630, Takings Implications; and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Intergovernmental relations (Federal/State cooperation), and National forest.

Therefore, for the reasons set forth in the preamble, part 211 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 is revised to read as follows:

Authority: 16 U.S.C. 551, 472.

§ 211.1 [Removed]

2. Remove § 211.1.
Dated: September 4, 1996.

Joan M. Comanor,
Acting Chief.

[FR Doc. 96–23061 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–11–M

Proposed Rules

Federal Register

Vol. 61, No. 176

Tuesday, September 10, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV96-351]

RIN 0581-AB41

Amendments to the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Department of Agriculture (USDA) invites comments on proposed revisions to the PACA Regulations that are required in order to implement legislative changes signed by President Clinton on November 15, 1995 (Pub. L. 104-48). Specifically, the legislative changes phase retailers and grocery wholesalers out of license fee payments over a 3-year period; establish a one-time administrative fee for new retailers and grocery wholesalers entering the program after the 3-year phase-out period; increase license fees from \$400 to \$550 annually for all other licensees; grant USDA authority to adjust future license fees through "notice and comment" rulemaking; eliminate the requirement of filing notice of intent to preserve trust benefits with USDA in the PACA trust; require USDA to receive a written complaint before initiating an investigation; require additional USDA investigation notification procedures; increase administrative penalties; establish civil penalties as an alternative to revocation or suspension of license; continue current filing fees for formal and informal reparation complaints; explicit address the status of collateral fees and expenses; clarify misbranding prohibitions; and amend the provisions of PACA regarding the determination of responsibly connected individuals.

DATES: Comments must be received by November 12, 1996.

ADDRESSES: Interested persons are invited to submit written comments

concerning this proposal. Comments must be sent to James R. Frazier, Chief, Fruit and Vegetable Division, PACA Branch, Room 2095-So. Bldg., P.O. Box 96456, Washington, D.C. 20090-6456. All comments should reference the docket number and the date and page number of this issue in the Federal Register and will be made available for public inspection in the PACA Branch during regular business hours.

FOR FURTHER INFORMATION CONTACT:

James R. Frazier, Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 720-4180.

SUPPLEMENTARY INFORMATION: This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

The license fee increase was signed into law by President Clinton on November 15, 1995, as part of the PACA Amendments of 1995 (Pub. L. 104-48). Public Law 104-48 mandated an immediate increase in the license fees. As a result of this mandate, license renewals and new applications received after November 15, 1995, are subject to the \$550 fee. Notice of the fee increase was published in the Federal Register on December 27, 1995.

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been

defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. The PACA requires commission merchants, dealers, and brokers buying or selling fruits and/or vegetables in interstate or foreign commerce who meet certain threshold requirements to be licensed. There are approximately 15,300 PACA licensees. Separating licensees by the nature of business, there are approximately 6,000 wholesalers, 4,750 retailers, 2,100 brokers, 1,200 processors, 550 commission merchants, 450 food service businesses, 150 grocery wholesalers, and 50 truckers licensed under PACA. The license is effective for 1 year unless suspended or revoked by USDA for valid reasons [46.9 (a)-(h)], and must be renewed annually by the licensee. Many of the licensees may be classified as small entities.

Wholesalers, processors, food service companies, grocery wholesalers, and truckers are considered to be dealers and subject to a license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. Dealers whose fruit and vegetable purchases or sales do not exceed the 2,000 pound threshold are exempt from the license requirement. A retailer is considered to be a dealer and subject to license when the invoice cost of its perishable agricultural commodities exceeds \$230,000 in a calendar year. Brokers, negotiating the sale of frozen fruits and vegetables on behalf of the seller, are exempt from licensing when the invoice value of the transactions are below \$230,000 in any calendar year.

Pursuant to Public Law 104-48, the base license fee for all licensees, as set forth in these proposed regulations, was raised on November 15, 1995, from \$400 to \$550 for all licensees, except for retailers and grocery wholesalers. As reflected in the proposed regulations, retailers and grocery wholesalers will no longer have to pay license fees at the end of the 3-year phase-out period which began on November 15, 1995. This change affects approximately 30 percent, or about 4,900, of the firms licensed under PACA. During the first year, after enactment of P.L. 104-48, from November 15, 1995, through November 14, 1996, retailers and grocery wholesalers will have to pay \$400 for a new license, or for the

renewal of an existing license. For the second year of the phase-out period from November 15, 1996, through November 14, 1997, they will pay 75 percent of that fee, or \$300, for a license. During the last year of the phase-out period, November 15, 1997, through November 14, 1998, retailers and grocery wholesalers will pay 50 percent of the fee, or \$200 for a PACA license. After November 14, 1998, retailers and grocery wholesalers will no longer be required to pay an annual license fee, but they will be required to maintain a PACA license. At the time of application for a new license, retailers and grocery wholesalers will pay a one-time administrative fee of \$100.

The increase of \$150 in the base annual license fee, from \$400 to \$550, for commission merchants, brokers and dealers (other than retailers and grocery wholesalers) is considered nominal when averaged over a 12-month period. The fee increase, where applicable, affects all licensees regardless of size. Again, this proposed rule is needed solely for the purpose of conforming the current regulations to P.L. 104-48; license fee changes were required by statute and implemented on November 15, 1995. Projected annual income, based on the revised license fees, will approximate \$9,028,000 in fiscal year 1996, \$8,683,000 in fiscal year 1997, and \$8,288,000 in fiscal year 1998.

Public Law 104-48 removed the previously existing statutory cap on license fees other than those of retailers and grocery wholesalers, and altered the previous legislated ceiling on operating reserves of the PACA fund. After November 14, 1998, USDA has the authority to increase fees through rulemaking, provided operating reserves fall below 25 percent of the projected annual program costs. USDA projects that the initial increase in receipts from fees collected following enactment of P.L. 104-48 will allow the PACA fund to build up operating reserves so that no fee increase will be needed until fiscal year 2001, when PACA operating reserves are expected to fall below that level.

The proposed rule, again pursuant to Public Law 104-48, increases the penalty for late renewal of a license, and the penalty for operating without a license. These penalties, which are applicable to all entities operating subject to the PACA, are necessary to deter licensees from operating in violation of the PACA. Any penalties for violations of the PACA would be applied equitably.

A compliance guide which highlights the 1995 PACA legislation, and a general compliance guide entitled

"PACA Fact Finder" which explains the rights and responsibilities of firms operating subject to the provisions of the PACA, are available to all licensees, including small businesses.

Accordingly, based on the information discussed above and in the following discussion, it is determined that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The amendments to Public Law 104-48 set forth in this proposed rule involves a change in the existing information collection and record keeping requirements which were previously approved by OMB under the provisions of 44 U.S.C. Chapter 35. In accordance with the Paperwork Reduction Act of 1995, this notice announces AMS' intention to request revisions to a currently approved information collection in support of the Reporting and Record keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

Title: Reporting and Record keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Control Number: 0581-0031.

Expiration Date of Approval: May 31, 1999.

Type of Request: Revision of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent practices.

The law provides for the enforcement of contracts by providing a forum for resolving contract disputes, and for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA impresses a statutory trust on licensees for perishable agricultural commodities received, products derived from them, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents that have not been paid. An amendment to the PACA, enacted into law on November 15, 1995, reduced the record keeping and reporting burden imposed under the trust provision by removing the requirement that trust claimants file

notices of intent to preserve trust benefits with the Department of Agriculture. The burden is, therefore, being revised to remove the record keeping and time requirements that were necessary for the filing of trust claims. This action will decrease the time requirement by 43,091 total hours and the paperwork burden by 124,445 total annual responses.

The PACA is enforced through a licensing system and is user-fee financed through a license fee. All commission merchant, dealers, and brokers engaged in business subject to the PACA must be licensed. The license is effective for one (1) year unless withdrawn by USDA for valid reasons, and must be renewed annually. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected from respondents is used to administer licensing provisions under the PACA. The records maintained are used to adjudicate reparation and administrative complaints filed against licensees to determine the imposition of sanctions on firms and responsibly connected individuals who have engaged in unfair trading practices. We estimate the paperwork and time burden as follows:

Form FV-211, Application for License: average of 15 minutes per application per response.

Form FV-231, Application for Renewal of License: Average of 5 minutes per application per response.

Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations: Average of 5 minutes per notice per response.

Regulations Section 46.20—Records Reflecting Lot Numbers: Average of 8.25 hours with approximately 1,000 record keepers.

Regulations Section 46.46(d)(2)—Waiver of Rights to Trust Protection: Average of 15 minutes per notice with approximately 100 principals.

Regulations Sections 46.46(f) and 46.2(aa)(11)—Copy of Written Agreement Reflecting Times for Payment: Average of 20 hours with approximately 2,000 record keepers.

Estimate of Burden: The total public reporting burden for this collection of information is estimated to average 8 hours per response.

Respondents: Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

Estimated Number of Respondents: 15,550.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 118,476 hours.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michael A. Clancy, Head, License and Program Review Section, PACA Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2715-South Building, P.O. Box 96456, Washington, D.C. 20090-6456.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Background

The PACA, enacted in 1930, establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. The law provides a forum to adjudicate private disputes alleging violations of the PACA and awards damages against anyone who fails to meet contractual obligations subject to the PACA. The law also imposes a statutory trust on perishable agricultural commodities received but not yet paid for, products derived from those commodities, and any receivables

or proceeds due from the sale of those commodities for the benefit of unpaid suppliers or sellers.

Under the PACA, anyone buying and selling commercial quantities of fruits and vegetables in interstate or foreign commerce must be licensed. The cost of administering the PACA is defrayed primarily through the license fees paid by those engaging in business subject to the law. The law also imposes complaint filing fees which help finance the program. Amendments to the PACA in 1988 permitted the Secretary to assess a base annual license fee of \$400, plus \$200 for each branch operation in excess of nine. The maximum aggregate annual license fee for any firm could not exceed \$4,000. Public Law 104-48 increased the base license fee to \$550 while retaining the branch fee and the maximum aggregate for all applicants except retailers and grocery wholesalers who are phased out of paying a fee over a 3-year period.

Public Law 104-48 added two new definitions to the law for types of dealers: "retailer" and "grocery wholesaler". Accordingly, a change would be made in section 46.2 in the definition of "retailer" as it appears in the current regulations, and a new definition would be added to the regulations for the term "grocery wholesaler". The definition of "retailer" in the proposed regulations would be the same as that adopted in Public Law 104-48, but would include a provision to make it clear that occasional wholesale sales, defined as not more than 5 percent of the gross annual sales, would not remove a dealer from the category of "retailer". The intent was that occasional wholesale transactions should not remove an entity from the category of "retailer". The definition of "grocery wholesaler" would be the same as that adopted by Public Law 104-48, but would include objective criteria for determining the meaning of "primarily engaged" as that term is used in the definition. This will enable an entity to more readily determine whether it falls within the "grocery wholesaler" category.

The proposed definition of "good faith" would also be added to the regulations since that term is used in Section 2 of Public Law 104-48 in reference to collateral fees. The proposed definition is taken from the Uniform Commercial Code article on Sales, section 2-103(b). Public Law 104-48 provides that the good faith offer, solicitation, payment or receipt of collateral fees is not, in and of itself, a violation of the PACA. The proposed regulation points out that where collateral fees would affect a material

term of the agreement, disclosure of the fees is required by the principle of good faith.

Section 46.6 would be revised to conform with the fee structure mandated by Public Law 104-48. Under the new fee structure, retailers and grocery wholesalers, described earlier, are phased out of the responsibility for annual license fee payments over a 3-year period. A one-time administrative fee was established by Public Law 104-48 for new retailers and grocery wholesalers entering the program after the 3-year phase-out period. License fees for all other licensees are increased from \$400 to \$550 annually. After the expiration of the 3-year period, USDA is authorized to adjust future license fees through notice and comment rulemaking.

Conforming changes are proposed for sections 46.9 and 46.10 as a result of the increased penalties for late license renewals provided Public Law 104-48. Sections 46.9 and 46.10 would also be revised to make these sections applicable to entities subject to license which no longer have to pay an annual license fee. As mandated by Public Law 104-48, the payment of renewal fees or accrued license fees is not required of such entities after the phase-out period, but they are subject to the \$50 late application fee, and when they have violated the PACA by operating without a license, they will have to submit the required license application and pay the applicable fine. The proposed regulation would implement these changes.

The House Agriculture Committee, in its Report (House Reports No. 104-207), directed USDA to review and revise the PACA regulations relating to brokers in order to "accurately reflect an increased role as a purchaser's agent". The role of brokers has changed over the years and increasingly the broker is engaged by the buyer. To address this issue, we propose to revise sections 46.27 and 46.28, which describe and establish the duties of a broker, to more accurately describe the relationship of a broker to buyers and sellers, and to require that the broker disclose on its confirmation or memorandum of sale the party that engaged the broker to act in the negotiations. A broker is "engaged" by, and thus may have a closer relationship with, one of the parties to the contract than with the other. The changes in these sections are intended to recognize that the broker may not be a neutral party and would make the broker's position relative to the parties clear.

Section 46.45 is being modified to reflect the amendment to the misbranding provisions requiring that only the first licensed handler be held

responsible for the violation unless subsequent handlers had knowledge of the misbranding and failed to correct it.

The Amendments also eliminate from the law the need for unpaid produce suppliers to file trust notices with USDA in order to preserve their rights to trust protection under the statutory trust provision of the PACA. Therefore, paragraphs (d) and (e) of § 46.46 of the regulations would be revised to eliminate references to filing with USDA. Paragraph (a) would be removed since it is unnecessary. Accordingly, paragraphs (b) through (g) would be redesignated paragraphs (a) through (f).

Redesignated paragraph (f) of section 46.46 has been reworded to remove the referenced requirement for the filing of the notice with USDA and to clarify the two methods available to preserve trust rights and their filing requirements.

Redesignated paragraphs (f)(1)(ii) and (3)(ii) conform with the statutory requirement that the notice of preservation of trust benefits contain the terms of payment when the parties have agreed to terms different from those established by the Secretary.

Redesignated paragraph (c)(2) would be reworded to make it clear that there is no general duty resting upon all brokers to preserve the trust benefits of their principals by filing trust notices. Rather the duty attaches only to brokers, or others operating in a fiduciary capacity, who have undertaken an obligation to "collect and remit". The paragraph also reminds those who employ collect and remit agents that they must preserve their right to trust benefits against such agents by filing appropriate notices with such agents. The citation in paragraph (e)(2) to paragraph (b)(1) would be conformed to the new paragraph designation for this section.

The Amendments outline new requirements for USDA when pursuing a disciplinary investigation of an alleged violation. USDA must have a written notification of the alleged violation before initiating an investigation. After receiving such a complaint, USDA would initiate an investigation if warranted. The subject of the investigation would be notified of the existence of the investigation and the nature of the alleged violations. Section 46.17, which establishes the requirements for inspection of records, would be revised to clarify that PACA representatives are permitted access to licensee's records to investigate petitions or complaints under section 6(a) of the PACA, and written notifications under section 6(b) of the PACA.

New section 46.49 would be added to the proposed regulations to describe what constitutes a written notification. In conformity with the text of amended section 6(b) of the PACA, official USDA certificates and trust notices are deemed written notifications, as are written statements reporting or complaining of a PACA violation filed by any officer or agency of any State or Territory having jurisdiction over licensees or persons subject to license or any other interested person who has knowledge of or information regarding a possible violation other than an employee of an agency of USDA administering the PACA. In conformity with the language used by Report 104-207 of the House Committee on Agriculture, written notifications are equated with complaints as that term is used in the PACA. The proposed regulation also outlines investigative procedures relating to such complaints.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o

2. In § 46.2, paragraph (j) is revised and two new paragraphs (hh) and (ii) are added to read as follows:

§ 46.2 Definitions

* * * * *

(j) *Retailer* means a person that is a dealer engaged in the business of selling any perishable agricultural commodity at retail; *Provided*, That occasional sales at wholesale shall not be deemed to remove a dealer from the category of retailer if less than 5 percent of annual gross sales is derived from wholesale transactions.

* * * * *

(hh) *Good faith* means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade. The principle of good faith requires that a party to a transaction disclose the existence of any collateral fees and expenses to all other parties to the transaction where the collateral fees and expenses affect a material term of the agreement.

(ii) The term *grocery wholesaler* means a person that is a dealer primarily engaged in the full-line wholesale distribution and resale of

grocery and related nonfood items (such as perishable agricultural commodities, dry groceries, general merchandise, meat, poultry, and seafood, and health and beauty care items) to retailers. However, such term does not include a person described in the preceding sentence if the person is primarily engaged in the wholesale distribution and resale of perishable agricultural commodities rather than other grocery and related nonfood items. This definition states two criteria in order for an entity to be considered a grocery wholesaler:

(1) The entity must be primarily engaged, that is, have 50 percent or greater of its annual gross sales, in the full-line distribution and resale of grocery and related nonfood items.

"Full-line" means that the entity must be supplying the retailer with a wide range of products such as the items specified. If the entity meets this condition, then the entity will be

considered a grocery wholesaler unless;

(2) The entity has more than 50 percent of its annual gross sales in perishable agricultural commodities.

3. § 46.6 is revised to read as follows:

§ 46.6 License fees.

(a) For retailers and grocery wholesalers making an initial or a renewal application for license, the annual license fee is as follows:

(1) During the period November 15, 1995 through November 14, 1996, the license fee is \$400 plus \$200 dollars for each branch or additional business facility operated by the applicant in excess of nine. In no case shall the aggregate annual fees paid by any retailer or grocery wholesaler during such period exceed \$4,000.

(2) The annual license fee during the period November 15, 1996 through November 14, 1997, is \$300 plus \$150 for each branch or additional business facility operated by the retailer or grocery wholesaler in excess of nine. In no case shall the aggregate annual fees paid by any retailer or grocery wholesaler during such period exceed \$3,000.

(3) The annual license fee during the period November 15, 1997 through November 14, 1998, is \$200 plus \$100 for each branch or additional business facility operated by any retailer or grocery wholesaler in excess of nine. In no case shall the aggregate annual fees paid by any retailer or grocery wholesaler during such period exceed \$2,000.

(4) No annual license fee will be required after November 14, 1998 for renewal of a license. However, a retailer or grocery wholesaler making an initial

application for a license after November 14, 1998, shall pay a \$100 administrative processing fee.

(b) For commission merchants, brokers, and dealers (other than grocery wholesalers and retailers) the annual license fee is \$550 plus \$200 dollars for each branch or additional business facility in excess of nine. In no case shall the aggregate annual fees paid by any such applicant exceed \$4,000.

(c) The Director may require that fees be paid in the form of a money order, bank draft, cashier's check, or certified check made payable to "USDA-AMS". Authorized representatives of the Division may accept fees and issue receipts.

4. In § 46.9, paragraph (i) is revised to read as follows:

§ 46.9 Termination, suspension, revocation, cancellation of licenses; notices; renewal.

* * * * *

(i) Under section 4(a) of the Act, at least 30 days prior to the anniversary date of a valid and effective license, the Director shall mail a notice to the licensee at the last known address advising that the license will automatically terminate on its anniversary date unless an application for renewal is filed supplying all information requested on a form to be supplied by the Division, and unless the renewal fee (if any is applicable) is paid on or before such date. If the renewal application is not filed and/or the renewal fee (if required) is not paid by the anniversary date, the licensee may obtain a renewal of that license at any time within 30 days by submitting the required renewal application and/or paying the renewal fee (if required), plus \$50. Within 60 days after the termination date of a valid and effective license, the former licensee shall be notified of such termination, unless a new license has been obtained in the meantime.

5. § 46.10 is revised to read as follows:

§ 46.10 Nonlicensed person; liability; penalty.

Any commission merchant, dealer, or broker who violates the Act by engaging in business subject to the Act without a license may settle its liability, if such violation is found by the Director not to have been willful but due to inadvertence, by submitting the required application and paying the amount of fees that it would have paid had it obtained and maintained a license during the period that it engaged in business subject to the Act, plus an additional sum not in excess of two hundred and fifty dollars (\$250) as may be determined by the Director.

6. § 46.17 is revised to read as follows:

§ 46.17 Inspection of records.

(a) Each licensee shall, during ordinary business hours, promptly upon request, permit any duly authorized representative of USDA to enter its place of business and inspect such accounts, records, and memoranda as may be material:

(1) in the investigation of complaints under the Act including any petition, written notification, or complaint under section 6 of the Act,

(2) to the determination of ownership, control, packer, or State, country, or region of origin in connection with commodity inspections,

(3) to ascertain whether there is compliance with section 9 of the Act,

(4) in administering the licensing and bonding provisions of the Act,

(5) if the licensee has been determined in a formal disciplinary proceeding to have violated the prompt payment provision of section 2(4) of the Act, to determine whether, at the time of the inspection, there is compliance with that section.

(b) Any necessary facilities for such inspection shall be extended to such representative by the licensee, its agents, and employees.

7. In § 46.27, paragraph (a) is revised to read as follows:

§ 46.27 Types of broker operations.

(a) Brokers carry on their business operations in several different ways and are generally classified by their method of operation. The following are some of the broad groupings by method of operation. The usual operation of brokers consists of the negotiation of the purchase and sale of produce either of one commodity or of several commodities. A broker is usually engaged by only one of the parties, but in negotiating a contract the broker acts as a special agent of first one and then the other party in conveying offers, counter offers, and acceptances between the parties. Once the contract is formed, and the confirmation issued, the broker's duties are usually ended, and the broker is not the proper party to whom notice of breach or of rejection should be directed. However, a broker receiving notice has a duty to promptly convey the notice to the proper party. Frequently, brokers never see the produce they are quoting for sale or negotiating for purchase by the buyer, and they carry out their duties by conveying information received from the parties between the buyer and seller until a contract is effected. Generally, the seller of the produce invoices the buyer, however, when there is a specific

agreement between the broker and its principal, the seller invoices the broker who, in turn, invoices the buyer, collects, and remits to the seller. Under other types of agreements, the seller ships the produce to pool buyers, and the broker as an accommodation to the seller invoices the buyers, collects, and remits to the seller. Also, there are times when the broker is authorized by the seller to act much like a commission merchant, being given blanket authority to dispose of the produce for the seller's account either by negotiation of sales to buyers not known to the seller or by placing the produce for sale on consignment with receivers in the terminal markets.

* * * * *

8. In section 46.28, paragraph (a) is revised to read as follows:

§ 46.28 Duties of brokers.

(a) General. The function of a broker is to facilitate good faith negotiations between parties which lead to valid and binding contracts. A broker who fails to perform any specification or duty, express or implied, in connection with any transaction is in violation of the Act, is subject to the penalties specified in the Act, and may be held liable for damages which accrue as a result thereof. It shall be the duty of the broker to fully inform the parties concerning all proposed terms and conditions of the proposed contract. After all parties agree on the terms and the contract is effected, the broker shall prepare in writing and deliver promptly to all parties a properly executed confirmation or memorandum of sale setting forth truly and correctly all of the essential details of the agreement between the parties, including any express agreement as to the time when payment is due. The confirmation or memorandum of sale shall also identify the party who engaged the broker to act in the negotiations. If the confirmation or memorandum of sale does not contain such information, the broker shall be presumed to have been engaged by the buyer. Brokers do not normally act as general agents of either party, and will not be presumed to have so acted. Unless otherwise agreed and confirmed, the broker will be entitled to payment of brokerage fees from the party by whom it was engaged to act as broker. The broker shall retain a copy of such confirmations or memoranda as part of its accounts and records. The broker who does not prepare these documents and retain copies in its files is failing to prepare and maintain complete and correct records as required by the Act. The broker who does not deliver copies of these documents to all parties

involved in the transaction is failing to perform its duties as a broker. A broker who issues a confirmation or memorandum of sale containing false or misleading statements shall be deemed to have committed a violation of section 2 of the Act. If the broker's records do not support its contentions that a binding contract was made with proper notice to the parties, the broker may be held liable for any loss or damage resulting from such negligence, or for other penalties provided by the Act for failing to perform its express or implied duties. The broker shall take into consideration the time of delivery of the shipment involved in the contract, and all other circumstances of the transaction, in selecting the proper method for transmitting the written confirmation or memorandum of sale to the parties. A buying broker is required to truly and correctly account to its principal in accordance with section 46.2(y)(3). The broker should advise the appropriate party promptly when any notice of rejection or breach is received, or of any other unforeseen development of which it is informed.

* * * * *

9. In § 46.45, the introductory text is revised to read as follows:

§ 46.45 Procedures in administering section 2(5) of the Act.

It is a violation of section 2(5) for a commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree, or maturity, or State, country, region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce. However, a person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of the Act by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.

* * * * *

10. In § 46.46, paragraph (a) is removed, paragraphs (b) through (g) are redesignated as paragraphs (a) through (f), and newly redesignated paragraphs (c), (e)(2), and (f) are revised to read as follows:

§ 46.46 Statutory trust.

* * * * *

(c) *Trust benefits.* (1) When a seller, supplier or agent who has met the eligibility requirements of paragraphs (e) (1) and (2) of this section, transfers ownership, possession, or control of

goods to a commission merchant, dealer, or broker, it automatically becomes eligible to participate in the trust. Participants who preserve their rights to benefits in accordance with paragraph (f) of this section, remain beneficiaries until they are paid in full.

(2) Any licensee, or person subject to license, who has a fiduciary duty to collect funds resulting from the sale or consignment of produce, and remit such funds to its principal, also has the duty to preserve its principal's rights to trust benefits in accordance with paragraph (f) of this section. The responsibility for filing the notice to preserve the principal's rights is obligatory and cannot be avoided by the agent by means of a contract provision. Persons acting as agents also have the responsibility to negotiate contracts which entitle their principals to the protection of the trust provisions: Provided, That a principal may elect to waive its right to trust protection. To be effective, the waiver must be in writing and separate and distinct from any agency contract, must be signed by the principal prior to the time affected transactions occur, must clearly state the principal's intent to waive its right to become a trust beneficiary on a given transaction, or a series of transactions, and must include the date the agent's authority to act on the principal's behalf expires. In the event an agent having a fiduciary duty to collect funds resulting from the sale or consignment of produce and remit such funds to its principal, fails to perform the duty of preserving its principal's rights to trust benefits, it may be held liable to the principal for damages. A principal employing a collect and remit agent must preserve its rights to trust benefits against such agent by filing appropriate notices with the agent.

(e) *Prompt payment and eligibility for trust benefits.*

* * * * *

(2) The maximum time for payment for a shipment to which a seller, supplier, or agent can agree and still qualify for coverage under the trust is 30 days after receipt and acceptance of the commodities as defined in § 46.2(dd) and paragraph (a)(1) of this section.

* * * * *

(f) *Filing notice of intent to preserve trust benefits.* (1) Notice of intent to preserve benefits under the trust must be in writing, must include the statement that it is a notice of intent to preserve trust benefits and must include information which establishes for each shipment:

(i) The names and addresses of the trust beneficiary, seller-supplier,

commission merchant, or agent and the debtor, as applicable,

(ii) The date of the transaction, commodity, invoice price, and terms of payment (if appropriate),

(iii) The date of receipt of notice that a payment instrument has been dishonored (if appropriate), and

(iv) The amount past due and unpaid. (2) Timely filing of a notice of intent to preserve benefits under the trust will be considered to have been made if written notice is given to the debtor within 30 calendar days:

(i) After expiration of the time prescribed by which payment must be made pursuant to regulation,

(ii) After expiration of such other time by which payment must be made as the parties have expressly agreed to in writing before entering into the transaction, but not longer than the time prescribed in paragraph (e)(2) of this section, or

(iii) After the time the supplier, seller or agent has received notice that a payment instrument promptly presented for payment has been dishonored. Failures to pay within the time periods set forth in paragraphs (f)(2)(i) and (ii) of this section constitute defaults.

(3) Licensees may chose an alternate method of preserving trust benefits from the requirements described in paragraphs (f)(1) and (2) of this section. Licensees may use their invoice or other billing statement to preserve trust benefits. The alternative method requires that the licensee's invoice or other billing statement, given to the debtor, contain:

(i) The statement: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."; and

(ii) The terms of payment if they differ from prompt payment set out in section 46.2(z) and (aa) of this part, and the parties have expressly agreed to such terms in writing before the affected transactions occur.

* * * * *

11. A new § 46.49 is added to read as follows:

§ 46.49 Written notifications and complaints

(a) The term *written notification*, as used in section 6(b) of the Act, means:

(1) any written statement reporting or complaining of a PACA violation(s) filed by any officer or agency of any State or Territory having jurisdiction over licensees or persons subject to license, or any other interested person who has knowledge of or information regarding a possible violation, other than an employee of an agency of USDA administering this Act or a person filing a complaint under Section 6(c);

(2) any written notice of intent to preserve the benefits of the trust established under section 5 of this Act; or

(3) any official certificate(s) of the United States Government or States or Territories of the United States.

(b) Any written notification may be filed by delivering it to any office of USDA or any official thereof responsible for administering the Act. A written notification which is so filed, or any expansion of an investigation resulting from any indication of additional further violations of the Act found as a consequence of an investigation based on written notification or complaint, shall also be deemed to constitute a complaint under section 13(a) of this Act.

(c) Upon becoming aware of a complaint under Section 6(a) or 6(b) of this Act, the Secretary will determine if reasonable grounds exist for an investigation of such complaint for disciplinary action. If the investigation substantiates the existence of violations, a formal disciplinary complaint may be filed by the Secretary as described under Section 6(c)(2) of the Act.

(d) Whenever an investigation, initiated as a result of a written notification or complaint under Section 6(b) of the Act, is commenced, or expanded to include new violations, notice shall be given by the Secretary to the subject of the investigation within thirty (30) days of the commencement or expansion of the investigation. Within one hundred and eighty (180) days after giving initial notice, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under Section 6(c)(2) of this Act, terminate the investigation, or continue or expand the investigation. Thereafter, the subject of the investigation may request in writing, no more frequently than every ninety (90) days, a status report from the Chief of the PACA Branch who shall respond thereto within fourteen (14) days of receiving the request. When an investigation is terminated, the Secretary shall, within fourteen (14) days, notify the subject of the investigation of the termination. In

every case in which notice or response is required under this subsection such notice or response shall be accomplished by personal service or by posting the notice or response by certified mail to the last known address of the subject of the investigation.

Dated: September 4, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96-23020 Filed 9-9-96; 8:45 am]

BILLING CODE 3410-02-P

Food and Consumer Service

7 CFR Parts 271 and 275

[Amdt No. 373]

RIN 0584-AB38

Food Stamp Program: 1995 Quality Control Technical Amendments

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Consumer Service is proposing technical changes to the Food Stamp Program's Quality Control System which will reduce the workload on State agencies and improve the efficiency of the quality control system.

DATES: Comments must be received by November 12, 1996, in order to be assured of consideration.

ADDRESSES: Please address all comments to John H. Knaus, Branch Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at Room 904, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: John H. Knaus, at the above address, or by telephone at (703) 305-2472.

SUPPLEMENTARY INFORMATION:

Executive Order 12866.

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866. It has been determined that the following cost-benefits would result from adoption of the provisions of this rule:

1. *State agency sample size.* The provision reducing the minimum sample size for active and negative case reviews will benefit those State agencies

who will be required to review fewer cases. These are States choosing the "smaller range" in their sample plans with current minimum active or negative case sample sizes above the minimum sample size. In Fiscal Year 1992, before the waiver was available, States reviewed nearly 52,000 active and over 30,000 negative cases. Assuming a 15 percent reduction in cases, under this provision, States will be required to review nearly 8,000 fewer active cases and about 4,500 fewer negative cases. Assuming that each active case review costs \$180 and each negative case review costs \$40 (taken from studies of active and negative case reviews and adjusted to account for wage inflation), total potential savings for States and FCS combined is an estimated \$1.6 million. Savings for States are estimated at \$800,000.

2. *Home visits.* It is estimated that minimal savings in quality control expenditures will result from this provision as it is expected that State agencies will channel the resources into other aspects of quality control operations.

3. *Error dollar tolerance level.* The provision to modify the tolerance level from \$5.00 to \$10.00 for excluding small errors will benefit those State agencies which qualify for enhanced funding. Based on Fiscal Year 1995 data, State agencies would qualify for an additional \$562,811.

The Department has examined the impact on potential State agency liability calculations from the combined effect of changing the error dollar tolerance level and the case completion standard. Data from two fiscal years has been analyzed to determine how these changes would effect liability amounts. The data shows that in one year the potential liability would have been higher, and in another year it would have been lower. In both situations the amount of the change was under one million dollars.

It is not anticipated that any other provisions of this rule will have any significant impact on the costs or benefits to either the State agencies or FCS.

Executive Order 12372.

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control liabilities) or Part 283 (for rules related to quality control liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the Food Stamp Program.

Paperwork Reduction Act

Agency Information Collection Activities: Proposed Collection; Comment Request; FCS-380, Integrated Quality Control Review Worksheet

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposal to extend approval for information collection used on form FCS-380, the Integrated Quality Control Review Worksheet. The provisions of this rule do not impact on the approved information collection burden.

Written comments must be submitted on or before November 12, 1996.

Send comments and requests for copies of this information collection to: John H. Knaus, Chief, Quality Control Branch, Program Accountability

Division, Food and Consumer Service, U.S. Department of Agriculture, Room 904, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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.

For further information contact: John H. Knaus, (703) 305-2474.

Title: Integrated Quality Control Review Worksheet.

OMB Number: 0584-0074.

Form Number: FCS-380.

Expiration Date: 03/31/97.

Type of Request: Extension of a currently approved information collection.

Abstract: Quality Control monitors and reduces the rate of error in determining basic eligibility and benefit levels for the Food Stamp Program. The form FCS-380 serves as the source document from which other reports are compiled by State officials to be sent to the federal office in Washington, DC.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 61,840.

Estimated Time per Response: 9 Hours.

Estimated Total Annual Burden: 558,019 Hours.

Background

Since 1988, the Food and Consumer Service ("FCS") has published a number of proposed and final rules, all of which implemented changes in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011, *et seq.*, (the "Act"). These changes, required by the Hunger Prevention Act of 1988, Pub. L. 100-435 (the "HPA") and/or the Mickey Leland Childhood Hunger Relief Act of 1993, Chapter 3, Title XIII of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66 (the "Leland Act") affected the way FCS calculates liabilities and

enhanced funding, and the way State agencies may appeal those liabilities.

During this time, certain operational issues have arisen in quality control ("QC"). This action proposes to resolve these issues. FCS' intentions are to reduce the workload on both the State agencies and on itself and to arrive at final review findings, error rates, liabilities, and enhanced funding amounts more efficiently. The proposed changes would: (1) Clarify the process for conducting a quality control review of negative cases and add suspended cases, which are cases that are certified for the Food Stamp Program ("Program") but do not receive benefits, to the sample universe of negative cases; (2) permit State agencies to reduce their sample sizes; (3) clarify the minimum size of the Federal subsample; (4) clarify State sampling procedures; (5) change the formulas for calculating Federal subsample sizes; (6) increase the current tolerance level for excluding small errors; (7) modify the current requirement that requires that most quality control interviews be conducted in the recipient's home; (8) adjust the standard for the completion of quality control reviews from the current standard of 100 percent to a 98 percent completion requirement; and (9) clarify the circumstances under which the Federal findings of subsampled reviews will be changed.

Negative Case Reviews

This action proposes to clarify issues surrounding the review of negative cases and to expand the universe of cases to be reviewed. These proposals are the culmination of an FCS look at the quality control review process for negative cases, including an examination of that process in response to Congress' request contained in the HPA, 7 U.S.C. 2025(d). As a result of that request, FCS entered into a research contract with Abt Associates to develop and pilot test alternative approaches to measuring the extent of nonpayments to eligible households. In addition, prior to the study conducted by Abt Associates, the General Accounting Office (GAO) was asked by the Chairman, Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition, House Committee on Agriculture, to review the accuracy of State reported error rates for improper denials and terminations. As a result of its review, GAO made three recommendations: (1) That FCS annually review a sample of each State's quality control reviews of denials or terminations and adjust States' reported denial or termination error rates accordingly; (2) that FCS examine alternatives to encourage States

to reduce improper denial or termination error rates, including seeking authority to hold States financially liable for their improper denials or terminations; (3) that FCS monitor States' quality control review practices to ensure that the appropriate cases are reviewed and the required number of reviews are completed on time. Based on the results of the study, FCS determined to strengthen monitoring of the negative action review process, renew emphasis on corrective action to reduce improper negative actions, and hold States accountable within existing statutory and regulatory authorities.

With this background information in mind, FCS determined that certain changes to the regulations governing negative case reviews are warranted.

1. Federal Monitoring of State Agency Error Rates for Negative Case Reviews

FCS is proposing to clarify the requirements and procedures for Federal monitoring of the negative case reviews conducted by State agencies. Currently under regulations at 7 CFR 275.3(c) FCS is required to validate a State agency's negative case error rate only when the State agency's payment and underissuance rate appear to entitle it to enhanced funding and its reported negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year.

The regulation at 7 CFR 275.3(c) only provides the minimum level at which case review and validation are required. In practice, as circumstances warranted, review activity has been expanded. For example, review activities were expanded in response to the GAO audit. In addition, regional offices periodically review the quality of State agencies' negative case review processes. Unlike the results of the validation reviews, the results of these periodic reviews are not used to determine eligibility for enhanced funding, but rather to ensure the accuracy of States' procedures in conducting reviews. FCS is proposing changes to clarify that FCS retains its authority to conduct these periodic reviews, independent of the minimum validation activity required by regulation. The proposal is to require validation when both: (1) A State agency's reported negative case error rate is below or within two percentage points above the national weighted mean negative case error rate for the prior fiscal year; and (2) its payment error rate appears to entitle it to enhanced funding. It is anticipated that this increased validation activity will have a minimal impact on a State agency's workload. It will increase the

number of cases reviewed by some FCS Regional offices. The proposed regulation clarifies that FCS may review a portion or all of a State agency's cases as FCS deems appropriate.

2. Inclusion of Suspended Cases in the Negative Sample Universe

The quality control system has two sampling universes: the active case universe and the negative case universe. The universe for active cases includes households which have been certified eligible for food stamp benefits and which have received benefits for the sample month. The negative case universe includes households whose applications for food stamp benefits were denied or whose certification for participation in the Program has been terminated.

In certain cases, State agencies are allowed or required to suspend a food stamp household instead of denying its application or terminating its participation in the Program. Suspended households are certified for the Program, but do not receive any benefits. Households under monthly reporting systems may be suspended for one month rather than terminated if they become temporarily ineligible due to a periodic increase in recurring income, such as receipt of a fifth weekly paycheck during a month (7 CFR 273.21(n)(1)). Non-categorically eligible households of three or more persons which are eligible but entitled to zero benefits because of excess income may be certified and suspended rather than denied, and categorically eligible households who are entitled to zero benefits due to excess income must be suspended, since they cannot be denied under the provisions of the Act 7 U.S.C. 2014(a) and regulations (7 CFR 273.10(e)(2)(iii)(B); 7 CFR 273.2(j)(2)(vii)(F); 7 CFR 273.2(j)(4)(iii)(C)).

Under current regulations, suspended cases are excluded from both the active and negative case universes of the Program quality control system. FCS believes that these cases should be reviewed because of the potential for underissuances, and that it is more logical to review these cases with denied and terminated cases (negative cases) rather than with cases that received benefits (active cases). With this rule, FCS is proposing to include suspended cases in the negative case universe.

3. Use of the Action Date To Determine the Month in Which Negative Cases Are Included in the Sample Universe; Clarification of Meaning of "Break in Participation" for Suspended and Terminated Cases

In order to have an accurate measure of the correctness of negative actions, consistency in application of quality control procedures is necessary. FCS is concerned that problems State agencies have experienced in constructing the sample frame for negative cases may have resulted in failure to include certain cases in the negative sample universe. For example, in some cases when a household is denied and subsequently reapplies and is certified, the initial denial or denials have not been considered to be subject to review as negative actions. FCS is also concerned that there be consistency in the procedures used to determine whether an action to suspend or terminate a household has actually resulted in a suspension or termination.

Current regulations include a negative case in the sample universe for the month for which the denial or termination is effective. The regulations exclude from the negative universe any negative actions which were taken against a household which did not result in the household actually being denied or terminated. Sampling problems occur if States cannot sample the months for which the action is effective. This occurs because the actions themselves may occur after, during, or before the month for which the action is effective. FCS proposes to allow State agencies to sample the action date rather than the effective date to make sampling easier.

As a result of our review of these issues, FCS is proposing to revise the regulations to include denied, suspended, and terminated cases in the negative case universe in the month in which the action to deny, suspend, or terminate food stamp benefits was taken, and clarify that an action to terminate or suspend a household has actually resulted in a suspension or termination if the household experiences a break in participation in the program as a result of deliberate State agency action. The intent of these changes is to allow State agencies to construct consistent and reliable sampling plans for negative actions, and to ensure that negative actions which have the result of denying benefits to clients are subject to review, even if the actions are subsequently reversed, unless the reversal occurs under specified conditions and within specified timeframes.

FCS will allow State agencies to specify in their sampling plans the date on which the negative action would be considered to have taken place, and which would be considered the review date. Depending on the characteristics of individual State systems, this could be the date on which the eligibility worker makes the decision to suspend, deny, or terminate the case, the date on which the decision is entered into the data processing system, the date of the notice to the client, or the date the negative action becomes effective. A State may choose to use different dates as the date of the action for denials and suspensions/terminations. For example, it may choose to sample denials based on the date of the eligibility worker's decision, but sample suspensions and terminations based on the date the action goes into effect, to avoid sampling cases which are not subject to review because the negative action was never implemented. FCS' concern is not with the particular date which the State agency considers to be the action date, but rather the identification of a specific date associated with each negative action which can be applied consistently across all negative cases of a given type, and which will allow the State agency to ensure that all negative actions which are subject to review are included in the negative sample frame. Thus, if the State agency elects to use a date other than the decision date to construct its sample frame for negative cases, it is possible that the review date for these cases may fall outside the sample month. Negative cases shall not be dropped from the sample frame because the review date falls outside the sample month.

4. FCS Will Not Establish a Dollar Loss Rate for Negative Cases

One aspect of negative case reviews that was of interest to Congress was the establishment of a dollar loss rate. During its study, Abt Associates looked at the possibility of developing a reliable dollar loss figure. In its recommendations, Abt stated a partial measure of loss could be determined by the frequency and amount of benefits restored to improperly denied or terminated households. While FCS recognizes the possibility of establishing a partial measure, it does not believe that an effort to obtain such limited information is warranted in light of the increased workload and reporting burdens that would fall to the State agencies. In addition, FCS does not believe that the use of restored benefit information translates directly to a dollar loss figure for these cases. We

have not proposed the establishment of a dollar loss rate in this rulemaking.

State Agency Minimum Sample Sizes for Active and Negative Case Reviews

FCS now requires each State agency to choose one of two ranges for calculating its minimum sample size for active case reviews. One is a range of 300 to 2400 reviews per year. The other, the "smaller range", is a range of 300 to 1200 reviews per year. The exact size of each State agency's minimum sample size for each range is determined by formulas that base sample size on the size of State Program caseloads (7 CFR 275.11(b)(1)).

If a State agency wants to choose the "smaller range" it must include in its sampling plan a statement that it "will not use the size of the sample chosen as a basis for challenging the resulting error rates" (currently at 7 CFR 275.11(a)(2)(iv)). If a State agency does not include that statement in its sampling plan, it must calculate its minimum sample size for active case reviews using the 300 to 2400 review range.

The regulations now offer State agencies only one range for determining minimum sample size for negative case reviews. That is a range of 150 to 800 reviews (7 CFR 275.11(b)(2)).

There are no maximum sample sizes; a State agency may select and review any number of cases above its minimum.

FCS has granted waivers of the regulations on minimum sample sizes for active case reviews, in order to improve the efficiency of the quality control system without significantly affecting the reliability of quality control information. In order to make these temporary reductions permanent and to determine the appropriate conditions for these reductions, FCS is proposing to include the terms of these waivers in the Food Stamp Program regulations. FCS is also proposing to offer State agencies a choice of ranges to use in determining minimum sample sizes for negative case reviews that is similar to the choice of ranges for determining minimum sample sizes for active case reviews.

FCS is proposing to reduce the size of the "smaller range" for minimum sample sizes for active case reviews. The proposed range would be 300 to 1020 reviews, a 15 percent reduction at the top from the current range.

In order to use the minimum sample size calculated from the 300 to 1020 case range, a State agency would still have to include in its sampling plan the statement from current 7 CFR 275.11(a)(2)(iv) quoted above. The purpose of the statement, as described

in the February 17, 1984 preamble to the rule that established the requirement for the statement, was to serve as "a means of assuring that State agencies consider what degree of reliability they need." (49 FR 6295).

There would be no other conditions on a State agency's use of the revised "smaller range". It would be up to the State agency to determine the most effective use of available resources.

FCS is not proposing to reduce the lower bound of the minimum sample size ranges for active case reviews. For those State agencies whose sample size is at the lower bound of the ranges, a reduction in sample size would mean a reduction in reliability of quality control information which would be unacceptable to FCS.

FCS is likewise also proposing the creation of a "smaller range" for minimum sample sizes for negative case reviews. The "smaller range", representing a 15 percent reduction at the top from current requirements, would be 150 to 680 reviews per year. The current required range of 150 to 800 reviews per year would be retained as the larger range for minimum sample sizes for negative case reviews.

If a State agency chose to use the "smaller range" to calculate its minimum sample size for negative case reviews, it would be required to include in its sampling plan the statement in proposed new § 275.11(a)(2)(iv) that it "will not use the size of the sample chosen as a basis for challenging the resulting error rates." If a State agency did not include that statement, it would be required to calculate its minimum sample size for negative case reviews according to the larger range. As with active case reviews, the ranges would define minimum sample sizes; State agencies could always select more.

FCS is not proposing to reduce the lower bound of the minimum sample size ranges for negative case reviews. For those State agencies whose sample size is at the lower bound of the ranges, a reduction in sample size would mean a reduction in reliability of quality control information which would be unacceptable to FCS.

Federal Sample Sizes

On November 27, 1991, FCS published a final rule entitled "Miscellaneous Quality Control Provisions of the Hunger Prevention Act of 1988" (56 FR 60045). This rule permits FCS to select and to review samples smaller than those indicated by the tables if the State agency fails to complete its required sample.

FCS is proposing to change the headings to the tables which set out the

formulas for calculation of the Federal subsample size. These tables appear at 7 CFR 275.3(c)(1)(i) and 7 CFR 275.2(c)(3)(i) in current regulations; they appear in paragraphs 275.3(c)(1)(i)(A) and (B) and 275.3(c)(3)(i) in the proposed rule. The phrase "Federal subsample target" would appear, rather than the current phrase "Federal annual sample size". This change *would not permit* FCS to select and to review a smaller subsample for any reason other than a State agency's failure to complete the minimum number of reviews in its required sample size.

State Sampling Procedures

FCS is proposing four sets of technical clarifications to the sampling regulations so that the regulations will match the way State agencies design and implement their sampling plans.

1. Selection of One-Twelfth of the Sample Each Month

Current regulations require State agencies to explain the basis of each month's sample if it is "other than one twelfth of the active and negative sample sizes." Some State agencies have expressed concern that the regulations require that the agency select *exactly* one-twelfth of its sample in each month. This was never FCS' intent. It is inevitable that caseloads will fluctuate, and that the number of sampled households will rise and fall slightly each month. FCS' concern is not with these variations, but rather with the accuracy and integrity of the error rate estimate generated from the quality control samples. FCS has reviewed this provision in conjunction with the other regulatory provisions governing State sampling plans, and has determined that provisions requiring that sampling procedures conform to the standard principles of probability sampling and that state samples produce estimates with an acceptable, mandated level of reliability are sufficient to ensure that deviations, minor or otherwise, from equal monthly sample sizes will not jeopardize the validity nor the precision of those error rate estimates. Therefore, in § 275.11, FCS proposes to delete paragraph (a)(2)(iii) and renumber paragraph (a)(2)(iv) as (a)(2)(iii). We are also making technical corrections to regulatory references appearing in § 275.11(b)(1)(ii) and (b)(1)(iii). Each of these paragraphs currently contains an erroneous reference to § 275.11(a)(2)(viii), which should be to current § 275.11(a)(2)(iv). Since paragraph § 275.11(a)(2)(iv) will now be renumbered, the reference will be corrected to refer to (a)(2)(iii).

2. Sampling Plans Must Conform to Accepted Statistical Theory

FCS is proposing to amend the regulations at 7 CFR 275.11(a)(3) to require that all sample designs conform to commonly acceptable statistical theory and application.

3. Basis for Final Sample Size

A State agency must calculate its required sample sizes at least twice for each review period. The first calculation occurs before the review period begins, when the State agency *anticipates* what its average monthly caseload will be. The second calculation occurs after the review period ends, when the State agency *knows* exactly what its average monthly caseload was. FCS is proposing to delete the word "anticipated" from paragraph 275.11(b)(1)(iv) and current (b)(2)(ii) (revised (b)(2)(iv)), to clarify that the final sample size depends upon the State agency's actual average monthly caseload.

Current regulations at 7 CFR 275.11(b)(3) provide that FCS will not penalize a State agency if its caseload increases by less than 20 percent from the estimated caseload number that the State agency used to determine the size of its sample. FCS is proposing to clarify that this estimated caseload number is the one *initially* used to determine the sample size. Sample sizes will be found to be adequate if at least the minimum required sample size for the estimated caseload is chosen, and the actual caseload is no larger than 120% of the estimated caseload.

4. Number of Households Subject to Review is the Basis for the Sample Size

Currently, the tables that describe the State agency's required sample sizes use the phrase "average monthly active households" and "average monthly negative households". However, the actual practice is to use the "average monthly reviewable caseload" as the basis for calculating minimum sample sizes for both active and negative case reviews. Therefore, FCS is proposing to clarify the wording in the headings in the tables in proposed 7 CFR 275.3(c)(1)(i) (A) and (B), and in current 7 CFR 275.3 (c)(3)(i), 7 CFR 275.11 (b)(1) (ii) and (iii), and proposed 7 CFR 275.11 (b)(2) (i) and (ii). Please see FNS Handbook 311, section 3121.

Federal Subsample Size Formulas

For both active and negative case reviews, FCS reviews a subsample of the State agency's completed reviews. The minimum Federal subsample sizes are determined by formulas that are based on the number of reviews that a State agency has completed. For example, if

a State agency completed 1000 active case reviews, FCS would select a minimum subsample of 344 active case reviews. The range of the minimum subsample size for active case reviews is 150 to 400. The range of the minimum subsample size for negative case reviews is 75 to 160.

Because FCS is proposing a change in the number of cases that a State agency is required to complete, use of the current formulas for calculating subsample sizes would result in a decrease in the size of the minimum Federal subsample for a State agency that chooses the "smaller ranges" which FCS has proposed. However, FCS does not intend to reduce the size of the Federal subsample. Without a regulatory change, the formula for determining FCS' minimum subsample sizes would not accurately indicate the number of reviews that FCS would actually select for the subsample.

So that the public is aware of FCS' actual minimum subsample sizes, FCS is proposing revised formulas for the minimum active and negative Federal subsamples. These proposed formulas, when applied to the new proposed "smaller ranges" for State samples, would yield the current ranges for the Federal subsample. Under FCS' proposal, Federal reviewers could still select and review more cases than the minimum subsample.

Error Dollar Tolerance Level

Current regulations at 7 CFR 275.12(f)(2), first published August 3, 1979 (44 FR 45887) provide that only overissuances or underissuances to eligible households in an amount greater than \$5.00 shall be coded and reported in completing the quality control review of a sampled case. In the proposed regulations published April 10, 1979 (44 FR 21517) the Department cited as one of the primary reasons for the proposed \$5.00 tolerance the intention to "obviate the need to expend funds to correct minor variations between the reviewer's and the eligibility worker's allotment figures." Since its inception 15 years ago the \$5.00 tolerance figure has not been adjusted to take into account either increases in the Thrifty Food Plan, upon which food stamp allotments are based, or inflation in general. The Department has determined that because of the inflation to food stamp allotments which has occurred over the past 15 years an adjustment must be made to the tolerance level figure, in order to insure that minor variations between the reviewer's and eligibility worker's allotment figures continue to be

excluded from the error determination process.

The Department proposes to raise the \$5.00 tolerance level to \$10.00, in order to compensate for the inflation which has occurred since the \$5.00 tolerance was first established. Only those overissuances to eligible households, or underissuances to eligible households which exceeded the \$10.00 tolerance figure would be reported and coded in the completion of quality control reviews. Based on an analysis of Fiscal Year 1993 quality control case review figures, an increase of the tolerance level to \$10.00 would have the overall effect of decreasing the quality control National Average Payment Error Rate by .17 percent, and an increase in total liability amounts of \$650,000. The slight increase in total liability amounts is due to the fact that liability figures are based, in part, on the percentage that an individual State agency's Payment Error Rate exceeds the National Average Payment Error Rate.

Home Visit Requirement

Current regulations at 7 CFR 275.12(c)(1), first published August 3, 1979, (44 FR 45895) specify that a face-to-face, personal interview, between the quality control reviewer and a responsible member of the household under review, is a required component of all active quality control reviews conducted. The regulations specify that most of these personal interviews shall take place in the participant's home, what is commonly referred to as a "home visit". The Department believes that the need for the personal interview to take place in the participant's home is no longer as great as it was when these provisions were first implemented. This is due, in part, to the greater variety of information sources, including computer data bases, which have been developed over the years to aid the reviewer in verifying the circumstances of the food stamp household under quality control review.

The Department is proposing to amend the requirement for personal interviews to simply require a face-to-face personal interview. It is expected that the personal interview would take place at an appropriate State agency certification office, in the participant's home, or at a mutually agreed upon alternative location. The State agency would determine the best location for the interview to take place, but would be subject to the same provisions as those regarding certification interviews at 7 CFR 273.2(e)(2). These regulations provide that an office interview shall be waived under certain hardship conditions (for example, if all

household members are disabled or elderly). Under such hardship conditions the quality control reviewer would conduct the personal interview either with an authorized representative (if one has been appointed by the household) or conduct the personal interview in the participant's home.

Conducting Quality Control Reviews Against Federal Regulations

Current regulations at 7 CFR 275.3(c) for Federal validation reviews, published February 4, 1987 (52 FR 3402) and 7 CFR 275.10(a) for quality control reviews conducted by the State agencies, published February 17, 1984, (49 FR 6294) specify that all active and negative quality control reviews shall be conducted by "reviewing against the Food Stamp Act and the regulations, taking into account any FNS-authorized waivers to deviate from specific regulatory provisions." This provision was made because the Department no longer had authority to require approval of State agency manuals prior to their use. It was the intent of the Department to eliminate the use of the State agency manuals in the quality control review process. In the preamble to the February 17, 1984, final rulemaking it is stated that although the Department no longer had the authority to require approval of manuals prior to their use, the rule did not prohibit their use for quality control review purposes. The Department expected that most State agencies would continue to use their manuals as the basis for quality control reviews. Commenters pointed out that this would result in Federal quality control reviewers finding errors in manuals before State agencies were otherwise notified of them, and that these errors would affect the regressed error rates. The commenters objected to this use of quality control reviews and requested that State agencies be given time to correct manuals before an error is counted. These comments were not adopted because the Department believed that if State agencies were not liable for certification errors resulting from manual materials from the date those materials were in effect, there would have been less of an incentive to implement regulations on time and in conformance with the regulations.

The Department believes that changes over the years in other areas of the regulations, including the provisions at 7 CFR 275.12(d)(2)(vii) published November 23, 1990, (55 FR 48831) which provide a variance exclusion for the timely implementation of new regulations, provide the incentive to the State agencies to implement regulatory changes in a timely manner. Therefore,

the Department is considering amending regulations in order to provide a variance exclusion for any erroneous payments which result from the State agency having followed State agency policies or directives, provided that these policies or directives were provided to FCS prior to implementation and FCS had not notified the State agency that these policies were contrary to Federal law or regulations. This would not encompass situations where a State agency might knowingly violate Federal law or regulations. This variance exclusion could include changes in the computer programming of any State agency automated certification system. Providing a variance exclusion in this area, whether cited by State agency or Federal quality control reviewers, would have the effect of holding the State agency harmless from any errors resulting from inaccurate instructions appearing in State manuals. At the same time, maintaining the current practice of conducting quality control reviews against the Food Stamp Act and regulations would assist the State agencies and FCS in identifying, for corrective action, any erroneous instructions contained in State agency manuals, policies, or directives.

The Department wishes to solicit comments from all interested parties on the appropriateness and potential consequences such a variance exclusion would have on the administration of the Program.

Quality Control Review Case Completion Standard

Current regulations at 7 CFR 275.23(e)(7)(iii), first published February 17, 1984 (49 FR 6292) provide that an adjustment be made to a State agency's regressed error rates any time that the State agency fails to complete 100 percent of its required sample size by assigning two standard errors of the estimated error rates added to the regressed error rates, to those cases not completed. (This was "two standard deviations" in prior regulations and has been changed to use the correct terminology for the adjustment that is done. Standard deviation refers to the true error rate, while the standard error refers to the estimate of the error rate.) Prior to the publication of the February 17, 1984 rule the completion standard had been 95 percent. It was the belief of the Department that the 100 percent completion standard was the only standard which would minimize any bias which incomplete cases could cause. In addition, because of changes which reduced the types of cases which would be considered incomplete, it was

believed that many State agencies would complete such a high percentage of their minimum sample size that the impact from the 100 percent completion standard would be minimal. However, experience has shown that there remain categories of cases which State agencies are unable to complete despite all efforts to do so on the part of the quality control reviewers. These cases include those in which the household under review refuses to cooperate with the quality control reviewer despite repeated attempts on the part of the State agency, including disqualification of the household from the Food Stamp Program, to gain the household's cooperation. An additional category is cases in which the reviewer is unable to verify the actual circumstances of the household for the time period under review, despite repeated attempts to do so.

The Department proposes to amend the current requirement that a State agency complete 100 percent of its minimum required sample size. The new standard for State agency completion will be 98 percent of its minimum required sample size. In the event that a State agency fails to complete 98 percent of its minimum required sample size, error rates would be adjusted using the current regulatory formula which is based on a 100 percent completion requirement.

Changing Federal Case Findings and Disposition

In active reviews, a *finding* is the determination of the accuracy of the State agency's authorized allotment for the household for the sample month. If the allotment was erroneous, the finding includes the amount of the error. In negative reviews, a *finding* is the determination of the validity of the State agency's decision to deny or terminate participation in the Food Stamp Program. For both active and negative reviews the *disposition* is the determination of whether the circumstances of the review meet the standards to be considered completed, not completed, or not subject to review.

Current regulations, FNS Handbook 315, and current administrative practices describe the following as a typical (although not mandatory) way to handle a subsampled case that the Federal reviewer has completed. (1) FCS informs the State agency of the Federal findings and disposition for the case. This is done within seven days of the completion of the Federal review. (2) The State agency requests arbitration if it disagrees with some aspect of the FCS findings or disposition of the review. Under current regulations the State

agency has 28 days to request arbitration. (3) During the same 28 day period the State agency may request that FCS reconsider the Federal findings or disposition in the case. (4) If FCS changes the Federal findings or disposition during the 28 day period because of the reconsideration, the new Federal findings/disposition are transmitted to the State agency, and a new 28 day period to request arbitration is provided for.

There are circumstances under which FCS will currently change Federal findings/disposition after the 28 day deadline for requesting arbitration. Generally the reason for any changes are to arrive at correct Federal findings.

The Department is proposing to codify into regulations the policies and practices which dictate when, and under what circumstances, FCS will change the Federal findings or disposition for a specific case. The Department has two goals in this proposal. First, the Department wishes to clarify the circumstances under which FCS will change Federal findings/disposition in order to promote clear, consistent application of its policies. The second goal in proposing these changes is to ensure the accurate determination of the error rates for all State agencies. The proposed changes are as follows:

1. Informal Resolution

FCS *would* change the Federal findings or disposition if, as a result of the informal resolution process, both the State agency and FCS agreed on a new finding or disposition. The informal resolution process should begin in the period prior to the 28 day deadline which a State agency has for requesting arbitration. The informal resolution process may also take place after the 28 day deadline, but prior to any formal decision by an arbitrator, provided that the State agency has timely requested arbitration of the case. It should be noted that the 28 day timeframe specified in this proposal is based on current regulations which provide State agencies with 28 days to request arbitration. Program changes mandated by the Leland Act regarding the timeframes for completing all review work and resolving all differences in review findings may require a modification of the timeframes for State agencies to request arbitration. If such a modification of the timeframes for requesting arbitration is made, it will be necessary in the final rule to adjust the timeframes for informal resolution.

2. Ruling by an Arbitrator

FCS *would* change the Federal findings or disposition whenever an arbitrator's decision requires that a change be made.

3. Implementation of a Regulation, Law, or Waiver

Whenever a change in Federal findings or dispositions is the only way to implement a change in regulations, an amendment to the Food Stamp Act, or retroactive provisions to a waiver, FCS *would* make the change.

4. Correct any Application of Incorrect Written Policy

Current regulations at 7 CFR 275.12(d)(2)(viii) exclude "any variance resulting from incorrect written policy that a State agency acts on that is provided by a Departmental employee authorized to issue Food Stamp Program policy and that the State agency correctly applies." The regulations go on to describe written policy as that in regulations, notices, handbooks, category three and four policy memoranda, and regional policy memoranda. The exclusion of these variances is required by section 16(c)(3)(B) of the Food Stamp Act (7 U.S.C. 2025).

The Department *would* change a Federal finding/disposition whenever it became aware that a variance which had been cited was the result of correct State application of an incorrect written policy provided by a Departmental employee authorized to issue FSP policy. It is likely that the State agency and FCS will not become aware of the problem until well after the State agency's deadline for requesting arbitration. This is because almost all parties involved, State agency quality control and certification policy staff, as well as FCS's regional office staff, will think that the written policy that they are following is correct. Therefore, in order to ensure that the State agency is not harmed by the Department's incorrect policy, the Department is proposing that the variance exclusion at 7 CFR 275.12(d)(2)(viii) may be made in the Federal findings at any time that the problem is discovered.

FCS *would* not make a change based upon new factual information. The Department is taking this position for three reasons. First, it is the responsibility of the State agency to obtain all necessary information at the time the State quality control reviewer conducts the review. Even if the Federal reviewer obtains conflicting information, the State reviewer has two more opportunities to resolve

conflicting information- when the State agency requests regional arbitration, and again if the dispute moves to national arbitration.

Second, if the household's circumstances were not reasonably certain at the time of the State agency's review, the case should have been disposed of as not completed. It does not seem likely that reasonably verified information would be contradicted at a later time.

Third, the Department recognizes the need for final closure at some point in the resolution process. Section 13951 of the Leland Act specifies that "no later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed." The Department believes that without providing some limits on the resolution process this mandated deadline cannot be achieved.

5. Conflict in a Federal Finding/Disposition

If, for any reason, the Federal findings or disposition in the Integrated Quality Control System's (IQCS) data base conflicted with the finding letter which had been transmitted to the State agency, FCS would ensure the IQCS data base was correct. If the IQCS coding was incorrect, it would be corrected. If the finding letter was incorrect, it would be corrected. Either way, FCS would transmit a new finding letter to the State agency explaining what had occurred. There would be a new finding letter because the State agency would be entitled to know that a change in official error rates would be taking place.

If, in any of the five circumstances which have been specified, FCS were to make changes to the findings and dispositions of a case these changes would be made regardless of the effect on the amount of error in the case. A State agency would be notified of the change and entitled to arbitration of the new Federal findings or disposition, with one exception. If FCS changed the Federal findings or disposition to comply with the decision of a national arbitrator, the State agency would have no further right to arbitration. This is because the national arbitrator's decisions are final, with two exceptions. The first would be to implement a change in law or regulations. The other would be if FCS learned that it had not properly implemented the decision of the arbitrator.

Miscellaneous Technical Correction

FCS is taking advantage of the publication of this proposed rule to eliminate redundant regulatory language at 7 CFR 275.12(g)(2). Six of the 10

subparagraphs in this paragraph, which lists active cases which are eliminated from the sample universe during the review process, also appear at 7 CFR 275.11(f)(1). Therefore, FCS is proposing to (1) revise paragraph 275.12(g)(2) to reference § 275.11(f); (2) remove subparagraphs 275.12(g)(2) (i) through (iv), (vi) and (viii), and (3) renumber the remaining subparagraphs in 275.12(g)(2). These revisions parallel the proposed revisions to § 275.13(e), which lists negative cases which are eliminated from the sample universe during the review process. In addition, FCS is taking advantage of the publication of this proposed rule to eliminate obsolete regulatory language at 7 CFR 275.23(e)(5)(i). Section 13951(c)(4) of the Leland Act provides that Administrative Law Judges, in considering a State agency's appeal of quality control liability consider all grounds for denying the claim, including the contention of a State agency that the claim should be waived, in whole or in part, for good cause. This provision was included in a final rulemaking published July 6, 1994 (59 FR 34553), and supersedes the regulatory language contained in 7 CFR 275.23(e)(5)(i) dealing with good cause requests and the timing of the issuance of billings. The Department is also proposing to move, without change, the regulatory language in 7 CFR 275.23(e)(5)(i) dealing with the methods of claim collection employed by FCS to 7 CFR 275.23(e)(8). With the removal of the language dealing with billings from 7 CFR 275.23(e)(5)(i), paragraph (e)(8) becomes the proper location for the provisions regarding the methods of bill collection to be employed by FCS.

Implementation

FCS proposes all provisions would be effective with the 1998 fiscal year, which begins with the October, 1997 sample month.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting, and recordkeeping requirements.

For the reasons set out in the preamble, parts 271 and 275 of Chapter II of Title 7 Code of Federal Regulations are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citation for Part 271 continues to read as follows:

Authority: 7 U.S.C. 2011-2032.

2. In § 271.2, the definitions of "Error", "Negative case", "Negative case error rate", "Quality control review", and "Review date" are revised to read as follows:

§ 271.2 Definitions.

* * * * *

Error for active cases results when a determination is made by a quality control reviewer that a household which received food coupons during the sample month is ineligible or received an incorrect allotment. Thus, errors in active cases involve dollar loss to either the participant or the government. For negative cases, an "error" means that the reviewer determines that the decision to deny, suspend, or terminate a household was incorrect.

* * * * *

Negative case means a household whose application for food stamp benefits was denied or whose food stamp benefits were suspended or terminated by an action in the sample month.

Negative case error rate means an estimate of the proportion of denied, suspended, or terminated cases where the household was incorrectly denied, suspended, or terminated. This estimate will be expressed as a percentage of completed negative quality control reviews excluding all results from cases processed by SSA personnel or participating in a demonstration project identified by FCS as having certification rules that are significantly different from standard requirements.

* * * * *

Quality control review means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.

* * * * *

Review date for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day the household was certified, whichever is later. The "review date" for negative cases is the date of the agency's decision to deny, suspend, or terminate program benefits. For no case is the "review

date” the day the quality control review is conducted.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

3. The authority citation for Part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

4. In § 275.3:

a. the introductory text of paragraph (c) is amended by revising the third sentence and adding a new sentence between the third and fourth sentences;

b. paragraph (c)(1)(i) introductory text is revised, and the table following the introductory text is removed;

c. paragraphs (c)(1)(i)(A), (c)(1)(i)(B), and (c)(1)(i)(C) are redesignated as paragraphs (c)(1)(i)(C), (c)(1)(i)(D), and (c)(1)(i)(E), respectively, and new paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) are added;

d. newly redesignated paragraph (c)(1)(i)(C) is amended by removing the words “n is the” and adding in their place the words “n’ is the”;

e. paragraph (c)(3)(i) introductory text is revised, and the table following the introductory text is revised;

f. paragraph (c)(3)(i)(A), introductory text, is amended by removing the words “n is the” and adding in their place the words “n’ is the”;

g. paragraph (c)(3)(ii) is amended by adding the word “, suspend,” between the words “deny” and “or”;

h. a new paragraph (c)(6) is added.

The revisions and additions read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * * FCS must validate the State agency’s negative case error rate, as described in § 275.23(d), when the State agency’s payment error rate for an annual review period appears to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b)(2) of this chapter, and its reported negative case error rate for that period is less than two percentage points above the national weighted mean negative case error rate for the prior fiscal year. However, this requirement will not preclude the federal review of any negative case for other reasons as determined appropriate by FCS. * * *

(1) *Payment error rate.* * * *

(i) FCS will select a subsample of a State agency’s completed active cases, as follows:

(A) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(ii), the Federal

review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n’)
31,489 and over	n’=400.
10,001 to 31,488	n’=.011634 N+33.66.
10,000 and under	n’=150.

(B) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(iii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n’)
60,000 and over	n’=400.
10,001 to 59,999	n’=.005 N+100.
10,000 and under	n’=150.

* * * * *

(3) *Negative case error rate.* * * * FCS will select a subsample of a State agency’s completed negative cases, as follows:

Average monthly reviewable negative caseload (N)	Federal subsample target (n’)
5,000 and over	n’=160.
501 to 4,999	n’=.0188 N+65.7.
Under 500	n’=75.

* * * * *

(6) *Changing Federal Findings.* Once FCS has notified a State agency of a Federal finding, FCS shall change that Federal finding only according to the following procedures:

(i) FCS shall change a Federal finding only if:

(A) FCS informally resolves with a State agency the differences between the State agency and Federal findings, and both parties agree on a single Federal finding. The informal resolution process should begin prior to the deadline for the State agency to request arbitration of a case, and may continue after the arbitration deadline, provided that arbitration of the case has been timely requested by the State agency; or

(B) An arbitrator’s decision necessitates a change; or

(C) A change is the only way to implement a regulation or an amendment to the Food Stamp Act; or

(D) The change is solely attributable to the variance exclusion for incorrect written policy, as described at § 275.12(d)(2)(viii).

(ii) FCS shall notify the State agency that the Federal finding has changed.

(iii) The State agency shall be entitled to arbitration in accordance with paragraph (c)(4) of this section.

However, if FCS changed the Federal finding or disposition based on a national arbitrator’s decision, the State agency shall not be entitled to further arbitration.

(iv) If FCS enters a Federal finding into the data base at the National Computer Center but notifies the State agency of a different Federal finding for the same case, FCS shall ensure the IQCS data base contains the correct finding, notify the State agency of the discrepancy in the IQCS data base and the finding letter, and inform the State agency that it is entitled to arbitration in accordance with paragraph (c)(4) of this section.

* * * * *

§ 275.10 [Amended]

5. In § 275.10(a):

a. the second sentence is amended by adding the word “, suspended,” between the words “denied” and “or”;

b. the fifth sentence is amended by adding the word “, suspend,” between the words “deny” and “or”.

6. In § 275.11:

a. paragraph (a)(2)(iii) is removed, paragraph (a)(2)(iv) is redesignated as (a)(2)(iii) and a new paragraph (a)(2)(iv) is added;

b. paragraph (a)(3) is revised;

c. in paragraph (b)(1)(ii), the table is revised, and the text is amended by removing the reference to “(a)(2)(viii)” and adding in its place the reference to “(a)(2)(iii)”;

d. in paragraph (b)(1)(iii), the table is revised, and the text is amended by removing the reference to “(a)(2)(viii)” and adding in its place the reference to “(a)(2)(iii)”;

e. in paragraph (b)(1)(iv) the third sentence is amended by removing the word “anticipated”;

f. paragraph (b)(2) is revised;

g. paragraph (b)(3) is revised;

h. the last sentence in paragraph (c)(1) is amended by adding the word “, suspension,” between the words “denial” and “or”;

i. paragraph (e)(2) is revised;

j. the introductory text of paragraph (f)(2) is revised;

k. paragraph (f)(2)(iv) is revised and paragraphs (f)(2)(v) through (f)(2)(ix) are added.

The additions and revisions read as follows:

§ 275.11 Sampling.

(a) *Sampling plan.* * * *

(2) *Criteria.* * * *

(iv) If the State agency has chosen a negative sample size as specified in paragraph (b)(2)(ii) of this section, include a statement that, whether or not the sample size is increased to reflect an

increase in negative actions as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FCS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation. Whatever the design, it must conform to commonly acceptable statistical theory and application (see paragraph (b)(4) of this section).

- * * * * *
- (b) *Sample size.* * * *
- (1) *Active cases.* * * *
- (ii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=2400.
10,000 to 59,999	n=300+[0.042 (N-10,000)].
Under 10,000	n=300.

(iii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=1020.
12,942 to 59,999	n=300+[0.0153(N-12,941)].
Under 12,942	n=300.

* * * * *

(2) *Negative cases.*

(i) Unless a State agency chooses to select and review a number of active cases determined by the formulas provided in paragraph (b)(2)(ii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(iv) of this section, the minimum number of negative cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=800.
500 to 4,999	n=150+[0.144 (N-500)].

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
Under 500	n=150.

(ii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(iv) of this section may determine the minimum number of negative cases to be selected and reviewed during each annual review period as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=680.
684 to 4,999	n=150+[0.1224 (N-683)].
Under 684	n=150.

(iii) In the above formulas, n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(iv) In the above formulas, N is the average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. FCS shall not penalize a State agency that does not adjust its sample size if the actual caseload during a review period is less than 20 percent larger than the estimated caseload initially used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

* * * * *

(e) *Sample frame.* * * *

(2) *Negative cases.* The frame for negative cases shall list:

(i) all households whose applications for food stamps benefits were denied by an action in the sample month except those excluded from the universe in paragraph (f)(2) of this section. If a household is subject to more than one denial action in a single sample month, each action shall be listed separately in the sample frame; and

(ii) all households whose food stamp benefits were suspended or terminated by an action in the sample month except

those excluded from the universe in paragraph (f)(2) of this section.

* * * * *

(f) *Sample universe.* * * *

(2) *Negative cases.* The universe for negative cases shall include all households whose applications for food stamps were denied or whose food stamp benefits were suspended or terminated by an action in the sample month except for the following:

* * * * *

(iv) A household which is under active investigation for Intentional Program Violation;

(v) A household which was denied, but subsequently certified within the normal 30 day processing standard, using the same application form;

(vi) A household which was suspended or terminated but the suspension or termination did not result in a break in participation that is the result of deliberate State agency action. There would be no break in participation if the household is authorized to receive its full allotment in the month for which the suspension or termination was effective other than continuation of benefits pending a fair hearing. Pro rated benefits are not considered to be a full allotment;

(vii) A household which has been sent a notice of pending status but which was not actually denied participation;

(viii) A household which was terminated for failure to file a complete monthly report by the extended filing date, but reinstated when it subsequently filed the complete report before the end of the issuance month.

(ix) Other households excluded from the negative case universe during the review process as identified in § 275.13(e).

* * * * *

7. In § 275.12:

a. paragraph (c)(1) introductory text is revised;

b. the first sentence of paragraph (f)(2) is amended by removing the reference to "\$5.00" and adding in its place a reference to "\$10.00";

c. paragraph (g)(2) introductory text is revised.

The revisions and additions read as follows:

§ 275.12 Review of active cases.

* * * * *

(c) *Field investigation.* * * *

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to conducting the personal interview, the reviewer shall notify the household that it has been selected, as part of an

ongoing review process, for review by quality control, and that a personal face-to-face interview will be conducted in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. The personal interview may take place at an appropriate State agency certification office, at the participant's home, or at a mutually agreed upon alternative location. The State agency shall determine the best location for the interview to take place, but would be subject to the same provisions as those regarding certification interviews at 7 CFR 273.2(e)(2). These regulations provide that an office interview shall be waived under certain hardship conditions. Under such hardship conditions the quality control reviewer shall either conduct the personal interview with the participant's authorized representative, if one has been appointed by the household, or with the participant in the participant's home. Except in Alaska, when an exception to the field investigation is made in accordance with this section, the interview with the participant may not be conducted by phone. During the personal interview with the participant, the reviewer shall:

* * * * *

(g) *Disposition of case reviews.* * * *
 (2) *Cases not subject to review.* Active cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in 275.11(f)(1), these shall include:

* * * * *

- 8. In § 275.13:
 - a. paragraph (a) is revised;
 - b. the first sentence of paragraph (b) is revised;
 - c. the third sentence of paragraph (b) is amended to add the word “, suspension,” between the words “denial” and “or”;
 - d. the first sentence of paragraph (c)(1) is amended by adding the word “, suspended,” between the words “denied” and “or”;
 - e. the second sentence of paragraph (c)(1) is amended by adding the word “, suspend,” between the words “deny” and “or”;
 - f. the first sentence of paragraph (c)(2) is amended by adding the word “, suspended,” between the words “denied” and “or”;
 - g. paragraph (e)(1) is amended by adding a heading to the paragraph;
 - h. paragraph (e)(2) is revised;
 - i. the first sentence of paragraph (f) is amended by adding the words

“suspended or” between the words “been” and “terminated”.
 The addition and revisions read as follows:

§ 275.13 Review of negative cases.
 (a) *General.* A sample of households whose applications for food stamps benefits were denied or whose food stamp benefits were suspended or terminated by an action in the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny, suspend, or terminate the household, as of the review date, was correct. For negative cases, the review date shall be the date of the agency's decision to deny, suspend, or terminate program benefits. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings, including procedural problems with the action regardless of the validity of the decision to deny, suspend or terminate.
 (b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial, suspension, or termination is correct or whether the denial, suspension, or termination is correct for any other reason documented in the casefile. * * *

* * * * *

(e) *Disposition of case review.* * * *
 (1) *Cases reported as not complete.* * * *
 (2) *Cases not subject to review.* Negative cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in § 275.11(f)(2), these shall include:
 (i) A household which was dropped as a result of a correction for oversampling;
 (ii) A household which was listed incorrectly in the negative frame.

* * * * *

9. In § 275.23:
 a. paragraph (c)(4) is amended by adding the word “, suspension,” between the words “denial” and “or”;
 b. paragraph (e)(5)(i) is amended by removing everything but the first sentence;
 c. the introductory text of paragraph (e)(7)(iii) is amended by removing the word “all” and adding in its place the words “98 percent”;
 d. paragraph (e)(8) is revised.
 The revision reads as follows:

§ 275.23 Determination of State agency program performance.
 * * * * *

(e) *State agencies' liabilities for payment error rates.* * * *
 (8) *FCS Timeframes.* FCS shall notify State agencies of their payment error rates and payment error rate liabilities, if any, within nine months following the end of each fiscal year reporting period to which they pertain. FCS shall initiate collection action on each claim for such liabilities before the end of the fiscal year reporting period in which the claim arose unless an appeal relating to the claim is pending. Such appeals include arbitration cases, requests for good cause waivers, and administrative and judicial appeals pursuant to Section 14 of the Food Stamp Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c), FCS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability. FCS is not bound by the timeframes referenced in this subparagraph in cases where a State fails to submit QC data expeditiously to FCS and FCS determines that, as a result, it is unable to calculate a State's payment error rate and payment error rate liability within the prescribed timeframe.

* * * * *

Dated: August 28, 1996.
 Ellen Haas,
 Under Secretary, Food, Nutrition, and Consumer Services.
 [FR Doc. 96-22883 Filed 9-9-96; 8:45 am]
 BILLING CODE 3410-30-P

DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
8 CFR Part 322
[INS No. 1712-95]
RIN 1115-AE07

Children Born Outside the United States; Application for Certificate of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.
ACTION: Proposed rule.

SUMMARY: The Immigration and Naturalization Service (the Service) is proposing to amend its regulations relating to the naturalization of children born to or adopted by United States citizens abroad. This rulemaking is necessary to incorporate changes to the citizenship transmission requirements

under section 322 of the Immigration and Nationality Act.

DATES: Written comments must be submitted on or before November 12, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1712-95 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Jane Barker or Pearl B. Chang, Senior Adjudications Officers, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: Prior to October 25, 1994, a child born outside the United States to a United States citizen parent was not eligible for naturalization unless the child was residing permanently in the United States pursuant to a lawful admission, and was in the physical and legal custody of a United States citizen parent, who had fulfilled the residence and physical presence requirements necessary to transmit citizenship. As a result, a child could not become a United States citizen if his or her parents resided abroad or failed to meet the physical presence requirements.

Congress, through the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Public Law 103-416, October 25, 1994, section 102, established new criteria for expeditious naturalization of children born abroad. The revised conditions of eligibility are as follows:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization;
- (2) The child is physically present in the United States pursuant to a lawful admission;
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent;
- (4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1) of the Act;
- (5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five

years, at least two of which were after attaining the age of fourteen years, then:

(A) The child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent resident, or

(B) A citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

If these requirements are met, then the child is eligible for expedited naturalization. An eligible child shall be considered a United States citizen upon approval of the application and administration of the oath of allegiance, unless the oath is waived in accordance with section 337(a) of the Act.

On July 7, 1995, and December 22, 1995, the Service issued wires to all field offices providing instructions for processing applications under section 322 filed by a United States citizen for a child born outside the United States. The Service also provided instructions for issuance of Certificates of Citizenship to children who qualified for expedited naturalization under this section.

For expedited naturalization, a United States citizen parent, not a citizen grandparent, must file Form N-600, Application for Certificate of Citizenship, or, in the case of an adopted child, Form N-643, Application for Certificate of Citizenship for an Adopted Child. A separate application is required for each child. The application must be filed with the required fee, currently \$100 for Form N-600 and \$80 for Form N-643, as specified in 8 CFR 103.7(b)(1) and accompanied by a Form N-600/N-643 Supplement A, Physical Presence of Grandparent. The application should be completed in accordance with the instructions and accompanied by the initial evidence described on the forms. For applications based on a United States citizen grandparent's physical presence in the United States, the grandparent may be living or deceased when the application is filed.

If the applicant and child reside outside the United States, the applicant should include a request with the N-600 form noting preferred interview dates. The applicant should allow sufficient time to enable the Service office to preliminarily adjudicate the application, schedule the interview, and send the appointment notice to the foreign address. A stateside interview will be scheduled and the applicant will be instructed in the procedures to apply for a visitor's visa, unless eligible under

the Visa Waiver Pilot Program. In keeping with congressional intent, field offices will make every effort to expedite the interview process.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule establishes procedures for United States citizen parents to apply for the expeditious naturalization of their children born outside the United States. The affected parties are not small entities, and the impact of the regulation is not an economic one.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers. The information collection requirement (Form N-600/N-643 Supplement A, Physical Presence of Grandparent) contained in this rule is being developed by the Immigration and Naturalization Service. In accordance with the Paperwork Reduction Act, the Service will publish a notice in the Federal Register notifying the public of the new information collection (Form NN-600/N-643 Supplement A).

List of Subjects in 8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

Accordingly, part 322 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; APPLICATION FOR CERTIFICATE OF CITIZENSHIP REQUIREMENTS

1. The title of part 322 is revised as set forth above.

2. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1433, 1443, 1448.

3. Section 322.2 is amended by removing paragraph (c) and revising paragraph (a) to read as follows:

§ 322.2 Eligibility.

(a) *General.* To be eligible for naturalization under section 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:

(1) Comply with the requirements as provided in section 322 of the Act;

(2) Be readopted in the United States, in the case of an adopted child, if the foreign adoption was not full and final, or if the unmarried parent or United States citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings; readoption requirements may be waived if the state of the United States citizen parent(s) residence does not allow readoption and recognizes the foreign adoption as full and final under that state's adoption laws;

(3) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; a child under the age of 14 will generally be presumed to satisfy this requirement; and

(4) Comply with all other requirements for naturalization as provided in the Act and in part 316 of this chapter, including the disqualifications contained in sections 313, 314, 315, and 318 of the Act, except:

(i) The child is not required to satisfy the residence requirements under 8 CFR 316.2(a)(3), (a)(4), (a)(5), or (a)(6); and

(ii) The child is exempt from the literacy and knowledge requirements under section 312 of the Act.

* * * * *

4. Section 322.3 is revised to read as follows:

§ 322.3 Jurisdiction for filing application.

The Forms N-600 and N-643, applications for naturalization under section 322(a) of the Act, must be filed with the appropriate office of the Service as provided in the instructions on the application.

5. Section 322.4 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 322.4 Application and examination on the application.

(a) An application for naturalization under this section on behalf of a child shall be submitted on Form N-600 by the citizen parent or, in the case of an adoptive citizen parent, Form N-643. The application must be filed with the filing fee required in § 103.7(b)(1), Form N-600/N-643 Supplement A, Physical Presence of Grandparent, Form FD-258, Fingerprint Chart (for children over the age of 14), and the initial evidence required by the instructions on the forms.

(b) An application for naturalization under this section in behalf of a child should be handled expeditiously by the Service and, in the case of an application filed from abroad, a stateside interview shall be scheduled after a preliminary adjudication of the application has been made.

(c) The child and the citizen parent must both appear at the stateside interview.

* * * * *

Dated: July 1, 1996.

Doris Meissner,
Commissioner, Immigration and Naturalization Service.

[FR Doc. 96-23033 Filed 9-9-96; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

RIN 2105-AB78

[Docket No. OST-95-950, Notice No. 96-23]

Passenger Manifest Information

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to require that each air carrier and foreign air carrier collect basic information from specified passengers traveling on flight

segments to or from the United States. U.S. carriers would collect the information from all passengers and foreign air carriers would collect the information for U.S. citizens and lawful permanent residents of the United States. The information would include the passenger's full name and passport number and issuing country code, if a passport is required for travel. In addition, airlines would be required to solicit the name and telephone number of a person or entity to be contacted in case of emergency. Airlines would be required to make a record of passengers who decline to provide an emergency contact. The information would be provided to the Department of Transportation and the Department of State in case of an aviation disaster. The Department proposes to allow each airline to develop its own collection system, a description of which would be filed with the Department. Alternatively, the rule would provide that DOT may waive compliance with certain requirements of the part if an air carrier or foreign carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad.

DATES: Comments must be received November 12, 1996.

ADDRESSES: Comments on this notice of proposed rulemaking should be filed with: Docket Clerk, U.S. Department of Transportation, Room PL-401, Docket No. OST-95-950, 400 7th Street, SW, Washington, DC 20590. Five copies are requested, but not required.

FOR FURTHER INFORMATION CONTACT: Dennis Marvich, Office of International Transportation and Trade, DOT, (202) 366-4398; or, for legal questions, Joanne Petrie, Office of the General Counsel, DOT, (202) 366-9306.

SUPPLEMENTARY INFORMATION:

Background

During the immediate aftermath of the tragic bombing of Pan American Flight 103 over Lockerbie, Scotland on December 21, 1988, the Department of State experienced difficulties in securing complete and accurate passenger manifest information and in notifying the families of the Pan American 103 victims. The Department of State did not receive the information for "more than seven hours after the tragedy" (Report of the President's Commission on Aviation Security and Terrorism, p. 100). When the Department of State did acquire the passenger manifest information from Pan American, in accordance with current airline practice, it included only

the passengers' surnames and first initials, which was insufficient information to permit notification of the victims' families in a timely manner.

Statutory Requirements

In response to the Report of the President's Commission on Aviation Security and Terrorism, Congress and the Administration acted swiftly to amend Section 410 of the Federal Aviation Act (now 49 USC 44909). PL 101-604, which was signed by President Bush on November 16, 1990, mandates that,

the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State (1) not later than 1 hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight; or (2) if it is not technologically feasible or reasonable to fulfill the requirement of this subsection within 1 hour, then as expeditiously as possible, but not later than 3 hours after such notification.

The statute requires that the passenger manifest information include the full name of each passenger, the passport number of each passenger, if a passport is required for travel, and the name and telephone number of an emergency contact for each passenger. The statute further notes that the Secretary of Transportation shall consider the necessity and feasibility of requiring United States carriers to collect passenger manifest information as a condition for passenger boarding of any flight subject to the passenger manifest requirements. Finally, the statute provides that the Secretary of Transportation shall consider a requirement for foreign air carriers comparable to that imposed on U.S. air carriers. The statute provided 120 days after the date of enactment for the Secretary of Transportation to require all United States air carriers to provide the passenger manifest information to the Department of State.

The ANPRM

In order to implement the statutory requirements, the Department of Transportation published an advance notice of proposed rulemaking (ANPRM) on January 31, 1991 (56 FR 3810). The ANPRM requested comments on how best to implement the statutory requirements. Among possible approaches, the ANPRM noted that the Department might require airlines to collect the data at the time of reservation and maintain it in computer reservations systems. Alternatively, the ANPRM noted that the Department

might require each airline to develop its own data collection system, which would be approved by the Department. The ANPRM posed a series of questions concerning privacy concerns, current practices in the industry and potential impacts on day-to-day operations.

Comments to the ANPRM

Twenty-six comments were filed in response to the ANPRM. Commenters included the Air Transport Association (ATA), the National Air Carrier Association (NACA), the Regional Airline Association (RAA), Alaska Airlines, American Trans Air, the American Society of Travel Agents (ASTA), the "Victims of Pan Am Flight 103", the Asociacion Internacional de Transporte Aereo Latinoamericano (AITAL), a combined comment (filed by Air Canada, Air Jamaica, Balair, Condor Flugdienst GmbH, and the Orient Airlines Association), Aerocancun, Air-India, British Airways, Japan Airlines, Lineas Aereas Paraguayas, Nigeria Airways, Royal Air Maroc, Swissair, the Embassy of Switzerland, the Embassy of the Philippines, the United States Department of State (Assistant Secretary for Consular Affairs), the U.S. Department of the Treasury (U.S. Customs Service), the Commissioner of Customs, the United States Government Interagency Border Inspection System (IBIS), System One Corporation, and two individuals, Ms. Edwina M. Caldwell and Ms. Kathleen R. Flynn. In addition, the views of Meetings and Incentives in Latin America, an Illinois travel and tour company, are included in the docket because of a communication to a Department official after the ANPRM was issued.

The U.S. carriers shared similar concerns. They argued that the requirements should be imposed equally upon U.S. and foreign airlines in order to maintain a "level playing field." To the extent collecting the information causes passenger delays, it will degrade the service of U.S. airlines and result in loss of business to foreign competitors. Second, they argued that the information collection requirements must be designed to minimize additional passenger processing time. Those with automated reservations systems recognized that additional passenger processing time would be minimized if passenger manifest information is given at the time a reservation is booked. ATA, for example, stated that it believed that airlines cannot effectively collect this information at airport check-in because to do so would require at least an extra 60 seconds per passenger. Thus, if 200 people on a given flight arrived at the

airport without previously having given passenger manifest information, such a requirement could prolong processing by 3.3 person-hours.

ATA stated that to implement a passenger manifest information requirement, airlines would need to augment personnel, reservation systems, equipment and counter space. The last requirement, augmenting counter space, is not possible at all airports, and is especially difficult at foreign airports. In addition, ATA noted that intercarrier information exchange procedures would have to be developed. ATA stated that it is currently working on these procedures and asked that they not be addressed by regulation. Further, ATA noted that the passenger manifest requirement would mean that computer reservation systems, carrier reservation and customer service/check-in, and travel agency personnel would need training in new procedures. Finally, it stated that it was unrealistic to expect airlines to produce a complete manifest within one to three hours.

ATA also noted that three-quarters of international journeys are booked through travel agents and stated that any rule issued by the Department should assign travel agents responsibility for collecting manifest information from the passengers who book through them. It believed that some passengers will refuse to provide emergency contact information and airlines, therefore, should only be required to solicit the information rather than collect it. It stated that the Department of State should treat the information as confidential and that the information in the manifest should only be provided to family members. ATA vigorously defended the airlines' historic role in having primary responsibility for informing victims' families and argued that nothing should be done to usurp that role.

ATA also provided detailed comments on specific issues raised in the ANPRM. It stated that the definition of an aviation disaster was both too narrow and too broad. It suggested that although carriers should be responsible for obtaining the manifest information, they should not be responsible for verifying its accuracy, and that if a passenger declines to provide an emergency contact, the passenger should not be refused transportation. It noted that charter and tour operators, air taxi operators and commuter airlines should also be required to collect information to the extent they are providing foreign air transportation. ATA further argued that the information should be required only for U.S. citizens based on the legislative history of the

law and the need to minimize burdens on the carriers. ATA expressed concern that the provision of manifest information by foreign air carriers and foreign travel agents to U.S. air carriers could become a very serious issue for U.S. air carrier operations at foreign locations. If the information were not provided in advance, carriers would have to collect it at check-in, which would seriously degrade the competitiveness of U.S. carriers. It urged the U.S. Government to negotiate with foreign governments assurances that such information would be provided by foreign air carriers and foreign travel agents. ATA also argued that, to the extent that foreign law prohibits collection of this information, carriers should not be required to collect it. ATA believed that the information collection requirement should be applicable to all international flight segments (including flights between two foreign points), except for flights between the U.S. and Canada, Mexico, or the Caribbean. It argued that an exemption for these latter flights is justified because of the proximity of these nations, the lack of a passport requirement for travel to and from them, the communities of interest between the countries, and the great volume of transborder and Caribbean traffic.

Finally, ATA argued that in order to ameliorate delays, the State Department should purchase, and distribute to carriers, automated passport readers. It argued that any rule should be compatible with the Advance Passenger Information System (APIS) program and that the Department of State should create and maintain a data base of the statutorily-required information.

The Regional Airline Association, whose members carry approximately 1.5 million passengers internationally per year, was concerned about the potential costs associated with its members' inclusion in a rule. It favored a system whereby carriers could adopt whatever data collection system would work best. It questioned whether requiring travel agents to collect the information would be practical. It believed that foreign air carriers should be subject to the rule to alleviate any possible competitive impact.

The comments of the National Air Carrier Association focused on modifications to computer reservation system software. It proposed that inclusion of passenger contact, passport number, etc. be a mandatory element required to exit from a computerized passenger reservation record. Second, it suggested that the "passenger name list manifest" should automatically access this information from the passenger

name record in case of an emergency. NACA also stated that the information should be obtained on a "best efforts" basis, and that the U.S. carriers should not be legally responsible for collecting or verifying the information. It believed this caveat to be important particularly for travel to countries not requiring passports and travel to countries where applicable foreign law prohibits collection of personal information. NACA further argued that tour operators should collect the data for charter flights. Finally, it suggested that the data be collected by both U.S. and foreign carriers for all passengers, regardless of citizenship.

American Trans Air argued that the information collection request should be applicable to all passengers traveling internationally, and that if a passenger refused to provide the required information, the carrier should have the option of refusing transportation or requiring the passenger to sign a waiver. It noted concern over the high cost of the rule relative to the benefit to U.S. carriers, and the potential competitive impacts if foreign carriers were not required to collect the information. In an attached letter, American Trans Air indicated that for the 13 percent of its business for which it processed its own reservations (American Trans Air is primarily engaged in charter operations), it would not be that difficult a task to maintain passenger manifest information in its reservations system, although additional computer storage space would be required. It was concerned, however, about the potential impacts of any regulation on its other operations in which it does not directly handle reservations. These operations include wholesale charters, wetleases/subservice, military passengers, and incentive passenger charters.

Alaska Airlines was concerned that the rule might be applied to domestic flights that traverse foreign or international airspace enroute. It noted many practical difficulties in determining which flights might be covered and the need to restructure domestic travel in order to collect this information. Finally, like ATA, it argued that the rules should only apply to international flights that require a passport.

The foreign air carriers were unanimous in their opposition to having the rule apply to them. Most noted the legislative history of P.L. 101-604 and the specific language in the statute directing the Secretary to consider, not mandate, application to foreign air carriers. Most discussed the principle of comity and argued that application of the rule to foreign carriers, foreign

citizens and flights between two foreign points would be inappropriate and contrary to international law. Several of the foreign carriers (Japan Airlines, Royal Air Maroc, and Swissair) stated that collection of the information would violate the law of their home country or at least be restricted under foreign law. Others focused on practical difficulties relating to lack of automation (which would mean that passenger manifest information could only be collected at check-in), limited telecommunication facilities, language barriers, and the excessive cost and administrative burden that would result.

Japan Airlines also believed that its passengers would be reluctant to provide personal information that might be turned over to the U.S. Department of State, and which might be available to a range of other persons. It noted that travel agents would likely not wish information revealing the names of their clients placed in a computer reservation system accessible to their competitors. Royal Air Maroc was concerned that collection of the information would generally be by telephone conversations between their reservations staff or travel agents and individual passengers, and would be prone to error. Royal Air Maroc asserted that this would impose an unacceptable burden because the carrier would be forced to verify the information at check-in.

The Embassy of Switzerland stated that if the regulation were extended to foreign air carriers, it would be contrary to Article 23 of the Convention on International Civil Aviation and to Chapter 2 of Annex 9 of the Convention. It further stated that Swiss law makes unlawful, and subjects to criminal sanctions, the performance in Switzerland of an act for a foreign state which by its nature is an act performed by a public authority or a public officer. It stated that this law would apply to any data collection performed in Switzerland by Swissair pursuant to a Department of Transportation requirement under consideration in this rulemaking. The comments of Swissair reiterated these concerns and went on to argue that comity dictates that the regulation not be applied to foreign air carriers. To the extent that the Department is exploring foreign air carrier application, Swissair believed such consideration should take place within the context of bilateral negotiations or through the International Civil Aviation Organization.

British Airways objected to the application of passenger manifest requirements to foreign carriers, and argued that they were unnecessary to achieve the objective of ensuring that a

foreign carrier is able to identify all affected passengers in the event of an aviation disaster. It stated that it would even more strongly object to the extent that passenger manifest requirements were applied to foreign flight segments operated by foreign carriers.

British Airways believed that passenger manifest requirements would result in immense administrative and operational burdens and would increase passenger delay and inconvenience at already overtaxed international airports. While it recognized that, under optimal circumstances, the passenger manifest information would be provided at the time the reservation is made, it said that, in practice, some or all of the required information would need to be obtained during check-in, thereby significantly increasing the required check-in time for flights to and from the United States. It estimated the increased check-in time needed to collect passenger manifest information for its flights to and from the United States to be a minimum of 40 seconds per passenger. Using scenarios of one-half of all passengers and all passengers arriving at check-in without having provided passenger manifest information, British Airways calculated that this would translate into 2 to 4 hours of additional check-in processing time for a 360 seat airplane.

British Airways also believed that passenger manifest requirements, such as those set out in the ANPRM, would impose excessive and unnecessary financial costs. It estimated its minimum costs for any passenger manifest requirement to be: (1) Onetime costs of about \$100,000 for reprogramming of its Departure Control System; (2) onetime costs of about \$1 million for changes to its computer reservations system; and (3) annual charges of (conservatively) about \$500,000 for additional reservations and check-in staff in the United States and the United Kingdom.

The joint comment representing eighteen foreign carriers (Air Canada, Air Jamaica, Balair, Condor Flugdienst GmbH, and the Orient Airlines Association, which includes, Air New Zealand, Air Niugini, All Nippon Airways, Cathay Pacific Airways, China Airlines, Garuda Indonesia, Japan Airlines, Korean Air, Malaysia Airlines, Philippine Airlines, Qantas Airways, Royal Brunei Airlines, Singapore Airlines, and Thai Airways International) objected to application of the rule to foreign air carriers and made three main arguments. First, the joint commenters argued that application to foreign carriers would not result in competitive balance, but instead would

tip the scales further in favor of U.S. carriers because foreign carriers are excluded from the U.S. cabotage market. Second, the joint commenters argued that unilateral regulation of foreign carriers by the Department would conflict with the intent of other provisions of P.L. 101-604 that committed the United States to pursue its aviation security objectives through accepted multilateral and bilateral channels. In addition, they argued that unilateral regulation of foreign air carriers conflicts with the Chicago Convention and with the principles of comity and reciprocity. Finally, the joint commenters perceived little or no relationship between the collection of the specified passenger information and enhanced aviation security. They argued that compliance with the regulation would divert airline resources from enhanced aviation security and improvements to facilitate efficient air transportation, and would, at best, only marginally improve the State Department's ability to quickly notify victims' families in the very infrequent event of an air disaster. They argued that compliance would involve significant costs in the areas of automation and additional personnel, equipment, and airport counter space. In addition, they stated that foreign carriers would have higher compliance costs than U.S. airlines because foreign airlines are less automated, and because conforming interline ticketing procedures to accommodate passenger manifest information would be more expensive than conforming computer reservations systems to do the same. They concluded that the excessive costs of foreign carrier compliance are unreasonable.

AITAL, which represents 25 Latin American airlines, noted the heavy workload that might be required by this rule, particularly since many Latin American agencies and airport check-in counters are not automated. In addition, it noted potential difficulties in communicating this information promptly to the State Department in the event of a disaster.

Aerocancun and Lineas Aereas Paraguay questioned whether many, if any, concerned relatives would expect the U.S. State Department to have immediate passenger information in the event of an aviation disaster involving a foreign carrier. Aerocancun, which operates only charter service, also noted that it has little or no contact with passengers prior to their arrival at the departure airport. All of its sales and solicitation activities are performed by travel agents (who are the primary point of contact with the traveling public)

and/or tour operators. It stated that, as is customary in the charter market, it is not given a copy of the passenger manifest until 48 hours before flight departure and does not know of last-minute passengers until just prior to departure. Moreover, Aerocancun does not have a computerized reservation system. Both Aerocancun and Lineas Aereas Paraguay stated that the passenger manifest requirements would lead to delays and crowding at international airports.

The Embassy of the Philippines commented that Philippines Airlines was concerned that a passenger manifest requirement would force it to conduct tedious airport check-in procedures. Philippines Airlines also anticipated that gathering of additional information from passengers would require costly modifications to its computerized Departure Control System.

ASTA, which represents approximately 15,000 travel agents, argued that the Department should not require travel agents to collect and report passport numbers and emergency contact information. ASTA suggested that passengers complete a form similar to the Custom Declaration at the time of departure and that the stack of forms should constitute the manifest for a particular flight. If DOT did require travel agents to collect information, it argued that the agent should not be required to refuse to write a ticket if a passenger could not or would not provide the requisite information. It noted that as a practical matter, this information generally would need to be processed through computer reservations systems, which not all agents can access. It suggested that agents who do not have computer reservations systems should be exempt from the rules. Failing that, it argued that these agents should be permitted to satisfy the statute by delivering whatever information is available to the airline by telephone when the booking is made. In all cases, ASTA said that the compilation of an actual "manifest" for each flight must be accomplished by the airlines.

The Customs Service and the Interagency Border Inspection System (which is comprised of the U.S. Customs Service, the Immigration and Naturalization Service and the Departments of State and Agriculture) urged the Department to design the passenger manifest requirements to support the Advance Passenger Information System (APIS). APIS is an existing, voluntary program that allows airlines to transmit the full name, passport number, country of issuance, and date of birth for each passenger

prior to arrival in the U.S. APIS data are used to identify high-risk passengers and to facilitate the processing of low-risk passengers. The facilitation benefits of APIS accrue to passengers, airlines, airport operators, and government agencies. The U.S. Customs Service asked that DOT require the collection of passengers' dates of birth, and said that if this was done, airlines would possess all the necessary data to participate in APIS. The Interagency Border Inspection System (IBIS) suggested using the APIS system to fulfill DOT's passenger manifest requirement and specified a comprehensive list of data elements that should be included. At a minimum, IBIS would like the following information for each passenger: last name, first name, date of birth, nationality, travel document number, issuing country code for travel document, passenger's travel origination point (country code), contact name, and contact telephone number. Some of the agencies involved in IBIS would also like to collect additional passenger information consisting of visa issuing post, date of visa issuance and intended destination (U.S. address or "in transit").

The Assistant Secretary of State for Consular Affairs suggested that the rule cover U.S. citizens flying on U.S. or foreign air carriers. The Assistant Secretary noted that the Department of State has the responsibility to inform the families of U.S. citizens who are victims of aviation disasters regardless of the nationality of the airline. In addition, the Assistant Secretary noted that inclusion of foreign air carriers would satisfy the concerns of certain U.S. carriers that believe that application of such a regulation only to them would imply that U.S. carriers are less safe than foreign carriers. Finally, the Assistant Secretary noted that possible foreign government objections to passenger manifest requirements on the basis of their extraterritorial application would be lessened if the information collection were limited to U.S. citizens on flights to and from the United States.

The group, "Victims of Pan Am Flight 103" proposed a specific method to collect passenger manifest information. It suggested that boarding passes be redesigned to have a detachable stub that could be filled out by passengers and dropped in a box just before boarding a flight. It argued that such a method would require little work for the airlines; would not violate privacy laws in foreign countries; would allow medical personnel to obtain medical histories for survivors; would give an accurate count of passengers so that

rescuers would know when to stop searching; and would allow airlines to deliver a correct manifest to the State Department within one hour using a scanner on the stubs.

Meetings and Incentives in Latin America stated that passport numbers should be collected for all passengers, that collection of a work or home telephone number for each passenger should be mandatory, and that the party that makes the first contact with the passengers should be the one responsible for collecting the information.

Of the two individuals who provided comments, Ms. Caldwell, a former travel consultant, suggested that, to the extent possible, the travel agent or airline reservation agent should collect the required information. She suggested that the airport agent should check the record to ensure that the information is in the record. She further suggested that if a passenger refused to provide an emergency contact, the passenger should sign or initial some document prior to boarding. Finally, Ms. Caldwell stated that the rule should apply to all passengers on both U.S. and foreign air carriers for all international flights. Ms. Flynn, the mother of a passenger killed on Pan Am Flight 103, noted the hardships endured by the families and her belief that the traveling public would prefer to have passenger manifest information available in spite of some of the difficulties in implementing P.L. 101-604. She stated her belief that this additional information would deter certain terrorist activities.

System One, a computer reservations system provider, stated that although most of the issues related to the collection of passenger manifest data are airline issues, as a computer reservations systems provider, it would have no problem complying with any proposed regulations requiring data collection. It stated its willingness to participate in any industry effort to automate the transmission and collection of desired passenger data once agreed to by the Department and the airlines. Finally, it stated that automated handling of this type of information would improve compliance and facilitate the participation of U.S. and foreign airlines.

Subsequent DOT Activity

In January 1992, President Bush announced a "Regulatory Moratorium and Review" during which federal agencies were instructed to issue only rules that addressed a pressing health or public safety concern. During the course of the moratorium, the Department asked for comments on its regulatory

program. Comments that addressed the passenger manifest information statutory requirement were filed by ATA, Northwest, American, Air Canada, and Japan Airlines. ATA included passenger manifest among ten DOT and FAA regulatory initiatives that, if implemented, would be the most onerous for the airline industry. ATA recommended that if additional passenger manifest information was to be required, it should be limited to the information that is required by the U.S. Custom Service's APIS program. Northwest supported the ATA proposals and said they were part of an industry-wide effort to identify significant regulatory impediments. American Airlines listed the passenger manifest rulemaking in its top five (out of over 100) pending aviation rulemakings that should be eliminated/substantially revised. Air Canada said that if air carriers were required to adopt the APIS standard advocated by ATA, its costs (and those of other foreign air carriers) would be unnecessarily raised. Japan Airlines said that any requirement to collect personal data from air passengers would conflict with the Constitution of Japan, would be costly, and, to the extent that it was anticipated that such data would be shared with the APIS program, should be the subject of prior public discussion.

In the FY 1993 DOT Appropriations Act, Congress provided that none of the FY 1993 appropriation could be used for a passenger manifest requirement that only applies to U.S.-flag carriers. This provision was repeated in subsequent DOT Appropriations. For the current year, section 319 of the DOT FY 1996 Appropriation Act states:

None of the funds provided in this Act shall be made available for planning and executing a passenger manifest program by the Department of Transportation that only applies to United States flag carriers.

In light of the totality of comments and the fact that aviation disasters occur so rarely, DOT continued to examine whether there was a low-cost way to implement a passenger manifest requirement. In 1995, DOT considered seeking legislative repeal or modification of the statutory requirements. In the November 28, 1995, Unified Agenda of Federal Regulations, the passenger manifest entry stated that DOT "is recommending legislation to repeal the requirement [of passenger manifests] because of the high costs and small benefits that would result."

Cali Crash

On December 20, 1995, American Airlines Flight 965, which was flying from Miami to Cali, Colombia, crashed near Cali. There were significant delays in providing the State Department with a complete passenger manifest. Even when it was provided, the manifest was of limited utility to State because it lacked the passport numbers of the passengers. (The State Department did successfully carry out its other post-crash responsibilities.) Department of Transportation staff met with American Airlines to explore the logistical, practical and legal problems that they encountered in the aftermath of the crash, and ways these problems could be ameliorated in the future. We also met with high level representatives of the State Department to discuss State's needs and concerns on this matter.

Public Meeting

On March 29, 1996, DOT held a public meeting on implementing a passenger manifest requirement. The notice announcing the public meeting (61 FR 10706, March 15, 1996) noted that a long period of time had passed since the 1991 advance notice of proposed rulemaking, and that a public meeting during which stakeholders could exchange views and update knowledge on implementing such a requirement was necessary as a prelude to DOT proposing a passenger manifest information requirement. The notice enumerated ten questions concerning information availability and current notification practices, privacy considerations, similar information requirements, information collection techniques, and costs of collecting passenger manifest information.

The meeting was attended by approximately 80 people. To facilitate discussion, representatives of three family survivor groups (The American Association for Families of KAL 007 Victims, Families of Pan Am 103/Lockerbie, and Justice for Pan Am 103), the Air Transport Association, the Regional Air Transport Association, the National Air Carrier Association, the International Air Transport Association, the American Society of Travel Agents, U.S. Department of State, U.S. Customs Service, and DOT formed a panel. Members of the audience, who included representatives of foreign governments, were invited to participate in the discussion and did. The discussion lasted nearly 5 hours and covered a wide variety of topics. At the end of the meeting, it was the consensus that one or more working groups headed by the Air Transport Association would be

formed to further explore some of the issues raised.

Memorandum of Understanding

ATA convened a first working group that consisted of representatives of two family groups (Families of Pan Am 103/Lockerbie and American Association for Families of KAL 007 Victims), the National Air Disaster Alliance, the Department of State, and several U.S. airlines, with IATA in attendance. DOT was not a participant in the group. The working group is negotiating a voluntary Memorandum of Understanding (MOU) to be signed by individual airlines and the Department of State. The MOU is expected to set forth a series of procedures to facilitate smooth communication and prompt and accurate notification of family members, including designation of points of contact, information sharing, exchange of liaison officers, specification of duties of liaison officers, cross-training and prompt transmittal of accurate and useful passenger manifest information.

ATA also plans to integrate data issues into the work of this first working group by expanding it. (Alternatively, a second working group on data issues could be convened.) The expanded group is expected to include, in addition to the first working group participants, additional industry representatives and, perhaps, others who have data bases that might provide quick access to information that might help in the notification process.

TWA Flight 800

On July 17, 1996, TWA Flight 800, which was flying from New York to Paris, went down off Long Island, New York. Local government officials publicly commented on difficulties in determining exactly who was on board the flight and in compiling a complete, verified manifest. (TWA caregivers were generally praised for their efforts in the crash aftermath.) Although this was an international flight, the crash occurred in U.S. territorial waters and, therefore, the Department of State had no specific role in family notification and facilitation for U.S. citizens. The Department of State received inquiries from foreign governments regarding the fates of their citizens, however, and DOT also received such inquiries. In general, the TWA Flight 800 accident dramatized the problems related to prompt notification.

The Notice of Proposed Rulemaking

This notice proposes to require that each air carrier and foreign air carrier collect basic information from specified passengers traveling on flight segments

to or from the United States ("covered flights"). U.S. carriers would collect the information from all passengers and foreign air carriers would only be required to collect the information for U.S. citizens and lawful permanent residents of the United States. The information would include the passenger's full name and passport number and issuing country code, if a passport is required for travel. Carriers would be required to deny boarding to passengers who do not provide this information. In addition, airlines would be required to solicit the name and telephone number of a person or entity to be contacted in case of an aviation disaster. Airlines would be required to make a record of passengers who decline to provide an emergency contact. Passengers who decline to provide emergency contact information would not, however, be denied boarding. In the event of an aviation disaster, the information would be provided to DOT and the Department of State to be used for notification. DOT proposes to allow each airline to develop its own procedures for soliciting, collecting, maintaining and transmitting the information. The notice requests comment on whether passenger date of birth should be collected, either as additional information or as a substitute for required information (e.g. passport number).

Section-by-Section Analysis

The authority for the rule would primarily be based on P.L. 101-604, which was codified as 49 USC 44909. In addition, the Department has broad authority under Subtitle XII (Transportation) of Title 49 of the U.S. Code ("Transportation Code") for rulemaking, security, information collection and assessment of civil and criminal penalties.

Section 243.1 of the proposed rule notes that the purpose of the part is to ensure that the U.S. Department of Transportation and the U.S. Department of State have prompt and adequate information in case of an aviation disaster on specified international flights. In addition, it notes that the regulation is mandated by 49 USC 44909.

The definition section, Sec. 243.3, incorporates a number of statutory definitions for the reader's convenience and clarifies the use of various important terms used in the substantive requirements of the proposed rule. In response to a number of comments on this issue, the definition of aviation disaster has been tightened to follow more closely the statutory requirements. "Aviation Disaster" would be defined as

1) an occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury or in which the aircraft receives substantial damage, and in which the death, injury or damage was caused by a crash, fire, collision, sabotage, or accident; 2) a missing aircraft; or 3) an act of air piracy. We tentatively conclude the first part of this definition is vital because it relates to an objective occurrence that serves as the basis for determining the timing of the actions subsequently required. We request comments on whether the carrier should have the duty to present the manifest when "any" passenger has boarded the plane, or only when "all" passengers have boarded. The proposed definition would require that carriers have information on each passenger by the time each boards the airplane, rather than waiting until all passengers have boarded. Although ATA objected to this timeframe, it takes into account the possibility of an emergency in which all passengers might not have boarded the aircraft.

The term "U.S. citizen" includes U.S. nationals as defined in 8 USC 1101(a). "Lawful permanent resident" includes those defined in 8 USC 1101(a)(20). In simpler terms, U.S. citizen means a person holding a U.S. passport and a lawful permanent resident is a holder of a so-called "Green Card."

In order to clarify which flight segments are subject to the rule, the NPRM includes a definition for "covered flight." In the NPRM, covered flight means a flight segment operating to or from the United States. It does not include any flight segment in which both the origin and destination point are in the United States, even though some portion of the flight may be over territory not belonging to the United States. The definition also excludes any flight in which both the origin and destination point are outside of the United States. There would be many practical difficulties in getting foreign travel agents to collect this information in foreign countries. Some countries would certainly object to such a proposal on the grounds of extraterritoriality. We tentatively find that the costs and legal questions raised would far outweigh by the marginal benefit and, therefore, are not proposing to extend the rule to these flights. We request comments, however, on whether these flights should be covered.

A number of commenters raised privacy concerns related to providing an

emergency contact. In order to encourage passengers to provide the information, the NPRM proposes to allow the emergency contact to be either a person or an entity. The contact need not have any particular relationship to a passenger. We tentatively believe that this flexible approach will meet the needs of the State Department with the least possible intrusion into the private lives of passengers. Passengers that are uncomfortable, for whatever reason, with providing the name of a particular person can provide the name of an entity such as a business or other organization that should be contacted.

The term "passenger" is defined to include any person on board a covered flight with the exception of the flight crew assigned to that flight. In the past, there has been some confusion concerning the number and identity of certain categories of passengers, particularly non-revenue passengers, standbys and infants. The flight crew is excluded from the definition because the carrier knows their identity and has ready access to emergency information. Airline personnel who are on board but not working on that particular flight segment (e.g. "deadheads" and spare crews for onward flight segments) would be considered passengers for the purpose of this rule in order to ensure their accountability. Standby passengers, by definition, board at the last minute, when there is pressure on the airline to move the flight away from the gate. In the past, there have been problems with identifying standby passengers. Similarly, many airlines have not kept records of infants under two years old who are traveling for free on the lap of a passenger. In the case of an aviation disaster, we believe it is important to have a complete manifest, even if this requires a change of current airline practice.

Section 243.5, *Applicability*, states that this part applies to covered flights operated by air carriers and foreign air carriers. Under the Transportation Code, "air carrier" includes any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation. For example, air carriers include air taxis, commuter carriers, and charter operators. Similarly, "foreign air carrier" is defined in the statute to include any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation. In some instances, there may be two or more air carriers or foreign air carriers involved (e.g., a charter operator, which is an indirect air carrier, selling transportation on a flight

actually flown by an unaffiliated direct air carrier or a carrier operating under a code share agreement in which the service is held out under the name of one carrier but actually provided by another carrier). In each example, the two entities would have the legal responsibility for meeting the requirements of this part. As a practical matter, we would anticipate that the involved carriers would agree, by contract, which one would collect, maintain and transmit the data. So long as the information is collected, we would not require duplication of effort. The parties to the contract would have to be vigilant, however, because they would be jointly and individually responsible for compliance. A likely scenario is that carriers will delegate some of the responsibility for soliciting and collecting the information to travel agents. The same admonition concerning ultimate responsibility would apply in that case.

In the comments, there was vigorous disagreement as to whether foreign air carriers should be covered by the regulation. The Department proposes to include foreign air carrier flight segments to or from the United States. The State Department's responsibilities in case of an aviation disaster apply to all U.S. citizens regardless of the nationality of the carrier on which the citizen flies. Indeed, since approximately one-half of all U.S. citizens who travel outside the U.S. choose foreign carriers, failure to include foreign airlines would severely hamper the ability of the State Department to carry out its duties under 49 USC 44909. The failure to include foreign air carriers could lead to disparate treatment of U.S. citizen passengers. Finally, the language in the DOT Appropriations Act precludes the Department from adopting a rule applicable only to U.S. carriers.

In order to ameliorate potential costs and other burdens, the Department is proposing to limit the impact of the proposed rule in four important ways. First, foreign air carriers would only be required to collect information on U.S. citizens and lawful permanent residents of the United States. Foreign air carriers would, of course, be free to solicit the information from all its passengers if it chose to do so and was not prohibited by applicable foreign law. Second, the rule would only apply to flight segments to or from the U.S. Third, as discussed below, we are proposing that carriers need not comply with the regulation in places where solicitation or collection of the information would be contrary to applicable foreign law, and carriers (or the foreign government) notify DOT of

that fact. Finally, in order to provide even greater flexibility, we are proposing that DOT may waive compliance with certain requirements of this part if a carrier has in effect a signed Memorandum of Understanding with the State Department.

The heart of the proposal, Sec. 243.7, *Information Collection Requirements*, has two data collection requirements. The first requires U.S. air carriers to collect the full name and passport number and issuing country code for each passenger. U.S. air carriers are being required to collect information for each passenger because the statute speaks in terms of passengers. The two letter passport issuing country code is being required, as an additional element beyond the information specified in the statute, because having it broadens and enhances the usefulness of having passport number alone. In the instance of an aviation disaster that occurs on a U.S. air carrier on a covered flight, collecting passport issuing country, in addition to passport number for non-U.S. citizens and lawful permanent residents, will allow the Department of State to respond more rapidly than has been possible in the past to inquiries from foreign governments regarding their citizens. It will also allow the response to be targeted to the specific government, a desirable alternative to providing several foreign governments each with an entire passenger manifest. Finally, collecting issuing country code would eliminate possible confusion in the aftermath of an aviation disaster that could result from two passengers having the same passport number. It would only require foreign air carriers to collect the full name and passport number for each passenger who is a U.S. citizen or lawful permanent resident of the United States. As collection of a passport number/passport number and issuing country code is not required if the passenger is not required to present his or her passport for travel to or from the foreign point involved, we request comment as to whether U.S. airlines should be required to collect country of citizenship from all passengers on flights when a passport is not required for travel. The second part of the rule would require each air carrier and foreign air carrier to solicit from each covered passenger the name and telephone number of a person or entity that should be contacted in the event of an aviation disaster.

We request comment on whether we should require solicitation of date of birth, either as a voluntary or required data element, and whether this data element could substitute for the passport number/passport number and

issuing country code. Passenger first and last name and date of birth, taken together, constitute the minimal passenger information needed for participation in the Advance Passenger Information System (APIS) of the U.S. Customs Service, and U.S. government commenters raised the possibility that, once modified to accommodate passenger emergency contact information, APIS could itself fulfill all requirements of 49 USC 44909. Having the date of birth would allow U.S. Customs to expedite clearance of low risk passengers entering the United States and would facilitate the operations of air carriers, airports and other government agencies. We request comment generally regarding how APIS information can best be used to satisfy, within the bounds of the statute, the information requirements in this proposed rule. For those destinations where passports are not required, collecting the date of birth would aid identification. Finally, in the event of an aviation disaster, knowing the ages of passengers could aid local jurisdictions in their emergency responses.

The carrier's duty is to solicit the information concerning emergency contacts, and maintain it, if it is provided, for 24 hours after completion or cancellation of the flight. To be sure that every passenger is accounted for, the NPRM proposes that each carrier shall maintain a record for each passenger who declines to provide this information. No specific format for the record is proposed in order to give carriers' maximum flexibility.

Although the proposed rule does not specify that the information must be verified by the carrier, we would anticipate using a "reasonable person" standard before bringing enforcement action for information that is inaccurate. We would not envision having carriers check that the emergency contact is an actual person or entity or that the phone number is accurate. The passenger's name should, however, match that on the passport, if the passenger is required to present a passport for travel or the photo identification presented for security for travel where a passport is not required. 49 USC 44909 requires the Secretary of Transportation to consider whether the collection of this information should be a condition for boarding a flight. Because this information is necessary for the Department of State to carry out its responsibilities in notifying the families of victims of aviation disasters overseas, we propose that the collection of the name and passport number/passport number and issuing country code, if required for travel, for each covered

passenger be mandatory for boarding the flight.

Another important provision of the proposal concerns the procedures for collecting and maintaining the information. In response to the nearly unanimous comments on this point, the Department is proposing to allow carriers to use any method or procedure to collect, store and transmit the required information, subject to three conditions. First, information on individual passengers shall be collected before each passenger boards the airplane. Some carriers might enlist travel agents in collecting the information, others might use airport check-in, while others might have passengers complete a form prior to boarding. Other, equally acceptable, methods are certainly possible. Proposing a performance-oriented standard rather than mandating exactly how the information should be solicited, collected, maintained, and transmitted should allow for innovation, efficiency, convenience, and cost-consciousness.

Second, the information shall be kept for at least 24 hours after the completion or cancellation of the covered flight in case there is some problem that is not immediately discoverable. A collateral benefit of this approach is that the information would be available for many connecting flights between two foreign points. We request comments, however, on what, if any, time should we require this information to be retained. Carriers would not be required to destroy the information after 24 hours, but could purge their files in their normal course of business. It is our understanding that, as a practical matter, most air carriers would probably keep the information in their computers until passengers completed their itineraries. Information would, therefore, be accessible for some international flight segments between two foreign points on multi-leg journeys to or from the United States. We request comments if our understanding is incorrect.

Third, to the extent that the information is otherwise confidential, the information shall be kept confidential and shall be released only to the U.S. Department of State or U.S. Department of Transportation in the event of an aviation disaster or pursuant to U.S. Department of Transportation oversight of this part. The only exception to this requirement is that the information may be provided for use in the Advance Passenger Information System, and to other U.S. or foreign governmental entities as may be authorized by the Department of

Transportation. We envision that airline employees who have access to passenger records would have access to this information, and that no special handling would be required. Carriers currently have access to potentially sensitive information, such as credit card numbers, special medical needs, and religious dietary restrictions. If the information is collected and maintained in the professional manner we have experienced from airlines in the past, we do not anticipate serious concerns regarding invasion of passenger privacy. We would, however, deal strictly with unauthorized release of this information to any third party, including the press.

The airline involved would be required to inform the U.S. Departments of Transportation and State as soon as it learned of an aviation disaster. Pursuant to the statutory mandate, the regulation proposes that carriers shall transmit a complete and accurate compilation of information to DOT and the Department of State within 1 hour. If it is not technologically feasible or reasonable to fulfill the 1-hour requirement, then the information must be transmitted as expeditiously as possible, but not later than 3 hours after the carrier learns of the disaster. We are aware that some carriers believe that this time frame is ambitious, if not impossible. The statute is very clear on this point, however.

The NPRM would also require each air carrier to file with DOT a statement summarizing how it will transmit and collect the passenger manifest data. The purpose of the requirement is to provide important information to the Departments of Transportation and State for planning and response in case of an aviation disaster. The purpose is, as well, to allow basic DOT oversight of the regulation. Given these purposes, it is envisioned that the summary statements would include a complete description of how the data will be transmitted, which we anticipate could be accommodated in one typewritten page or less, and a very brief description of how the data would be collected, which we anticipate could be accommodated in most cases in one typewritten paragraph. Carriers would be required to file their summary statements on or before the date they begin collection of passenger manifest information. The summary statements should also include a 24-hour contact at the carrier to which a request from the Departments of State or Transportation could be directed. Changes in how the information would be transmitted and collected would also be required to be filed on or before the date those changes were implemented. The responsibility

remains with the carrier to ensure that its procedures meet the statutory and regulatory requirements.

The NPRM proposes that carriers not be required to solicit or collect information in countries where such solicitation or collection would violate applicable foreign law. Carriers that can support such a claim are asked to inform the Department on or before the effective date of this rule, or on or before beginning service to the United States. The Department intends to maintain an up-to-date listing of countries where adherence to all or a portion of this part would not be required because of conflict with applicable foreign law. We are hopeful that in the rare instances where this regulation may violate applicable foreign law, the Department, the Department of State, and carriers can work with the jurisdiction involved and agree to other methods to achieve the same results. In some countries, it may be illegal to require passengers to provide the information, but not illegal to simply request it. In such instances, carriers might ask for the information while making clear that it is up to the passenger whether to provide it. We will work with foreign governments to address any concerns.

Section 243.17 makes clear that the Department may exercise its enforcement authority by requesting a carrier to produce a manifest for a specified flight to ascertain the effectiveness of the carrier's system. In addition, it may request further information about collection, storage and transmission procedures at any time. If the Department finds the carrier's system to be deficient, it may order appropriate modifications. Section 243.19 notes that violations of the provisions of this part are subject to civil and/or criminal penalties for each violation as provided by 49 U.S.C. 46301, 46310 and 46316.

Section 243.21 provides that the Department may waive compliance with certain requirements of this part if an air carrier or foreign air carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad. Carriers that have signed such a Memorandum and that wish to take advantage of this shall submit two copies of the signed Memorandum to the Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation. The carrier will be informed by the Assistant Secretary for Aviation and International Affairs, or his or her designee, of the provisions of this part, if any, that are waived by the Department based on the

Memorandum. Such determination will be made in writing to the carrier. It is the Department's expectation that each carrier would still be required to file a summary description of its collection and transmission process and 24-hour contact number as required in § 243.13, and would be subject to the enforcement and penalty provisions of §§ 243.17 and 243.19.

Implementation Date

The Department proposes to make the final rule effective 90 days after publication in the Federal Register. Carriers, particularly U.S. airlines, have been on notice of the requirements in 49 U.S.C. 44909 since November 16, 1990. Because of the disproportionate burden that this rule may place on small air carriers, we will consider delaying the effective date for those carriers for a reasonable amount of time.

Economic Considerations

(Note: this section relies heavily on the Preliminary Regulatory Evaluation that accompanies this NPRM; a copy of the Preliminary Regulatory Evaluation is available in the Docket)

The Department is most interested in how it can fashion a final rule so that U.S. and foreign carriers alike can achieve the most effective transmission of information after an aviation disaster at least cost. This proposal, if adopted as a final rule, would be significant under E.O. 12866 and the Department of Transportation's regulatory policies and procedures because of the public and Congressional interest associated with the proposed rulemaking action. The Department will make every effort to make the final rule as cost-effective as possible, consistent with the clear-cut statutory requirements (e.g., a phase-in period for small air carriers). The proposed rule has been reviewed by the Office of Management and Budget.

As currently proposed, the total costs of implementing 49 U.S.C. 44909 are potentially large. Based on ANPRM comments (especially those of British Airways, which provided the most detailed cost information regarding implementing a passenger manifest requirement along the lines of the statute), reasonable assumptions about the economics of implementing a passenger manifest information requirement, and other generally available information, the Department estimates that the annual recurring costs of the proposed rule (which would be borne by air carriers, travel agents, and covered passengers, who forego time while being asked for and providing the information) would range between about \$27.6 and \$44.8 million per year.

These costs would break out as follows: air carriers \$6.2 million (U.S. air carriers \$4.4 million and foreign air carriers \$1.8 million); travel agents \$4.3 million; and covered passengers \$17.2 million to \$34.3 million. The one-time cost of the proposed rule (which would be borne by air carriers) is estimated to be about \$30.5 million and includes the costs of modifying air carriers' departure control systems, computer reservations systems, and interfaces with other computer reservation systems to accommodate passenger manifest information. The present value of the total costs of the proposed rule over ten years is estimated to range between about \$208.9 and \$319.6 million.

There are two direct notification benefits of the proposed rule: 1) More prompt and accurate initial notification to the families of U.S.-citizen victims of an aviation disaster that occurs on a flight to or from the United States (on a U.S. or foreign air carrier) and outside the United States, and 2) more prompt and accurate initial notification of the host governments of foreign-citizen passenger victims of an aviation disaster that occurs on a flight to or from the United States (on a U.S. air carrier) either outside or within the territory of the United States. The Department estimates that were the proposed rule in effect over ten years a total of 595 families and host governments would have received such direct notification benefits. That is, the Department estimates that over ten years there have been a total of 595 victims of aviation disasters in the two circumstances described above. Compared to the present value of the total costs of the proposed rule over ten years, the cost of the more prompt and accurate initial notification to these direct beneficiaries, on a per victim basis, ranges between about \$350,000 and \$540,000.

No accounting is made in the calculations above for more prompt and accurate initial notification of families of U.S.-citizen victims of aviation disasters that occur on flights to and from the United States, and for which the disaster occurs within the United States (e.g., TWA flight 800). None was made because the Department of State has no responsibilities regarding the notification of families of U.S.-citizen victims of an aviation disaster that occurs within the United States, even if the flight involved is an international flight. And, the primary focus of the statute is to provide information to the Department of State. However, since, under the proposed rule, passenger manifest information would have to be collected for all flights to and from the United States for transmission to the

Department of State in the event of an aviation disaster that occurred outside of the United States, it is quite possible that having it on-hand would also lead to more prompt and accurate initial notification of the families of U.S.-citizen victims of an aviation disaster on such a flight that occurs within the territory of the United States. Such families are considered to receive indirect notification benefits from the proposed rule. If such families are accounted for, in addition to the families and host governments counted above, then, were the rule in effect for a ten-year period, the Department estimates that more prompt and accurate notification of the families and host governments of 877 victims of aviation disasters would have taken place. The cost of the more prompt and accurate initial notification to these direct and indirect beneficiaries, on a per victim basis, now ranges between about \$238,000 and \$364,500.

A different perspective on the cost of the proposed rule can be gained from assuming that all recurring annual costs of the proposed rule are paid by the passengers that provide passenger manifest information. Employing this line of reasoning (this is an "as if" analysis since the Preliminary Regulatory Evaluation that accompanies the NPRM in the docket does not calculate who will be able, or not able, to pass along the costs of imposing a passenger manifest information requirement), were the proposed rule in effect in 1994 when about 71.5 million passenger (one-way) trips to and from the United States would have been covered, the estimated cost per passenger per one-way trip would have ranged between about \$0.39 and \$0.63. The estimated cost per passenger per round-trip would have been double these amounts, and would have ranged between about \$0.77 and \$1.25. (Numbers may not add exactly due to rounding.)

To summarize the above, direct and indirect benefits of the proposed rule accrue regarding more prompt and accurate *initial* notification of the families of U.S.-citizen victims of an aviation disaster on a flight to and from the United States that occurs outside the United States (direct) and within the territory of the United States (indirect). Direct notification benefits also accrue to the host governments of foreign citizens of aviation disasters that occur anywhere (outside or within the territory of the United States) on U.S. air carriers, since the Department of State is able to respond to the inquiries of these governments more quickly.

An idea of the magnitude of the reduction in initial notification time of families of U.S.-citizen victims of aviation disasters that occur outside the United States that might occur under the proposed rule may be gained from examining the notification experience in the Pan Am Flight 103 aviation disaster. There, according to the *Report of the President's Commission on Aviation Security and Terrorism*, some families of victims were notified by Pan American within about nine hours or less after the disaster was learned of, and all families were notified by Pan American within about 43 hours or less after the disaster was learned of. Compliance with the proposed rule in the case of Pan Am Flight 103 should have reduced notification times (to the extent that passengers chose to provide emergency contact information) by a maximum of about six to eight hours for the first group of families of victims, and by a maximum of about 40 to 42 hours for the remainder of the families of victims.

A third direct benefit of the proposed rule lies outside the realm of notification benefits and was not mentioned above. This third direct benefit of the proposed rule is an expected general increase in the disaster response capability of the Department of State following an aviation disaster. According to the *Report of the President's Commission on Aviation Security and Terrorism*:

Failure to secure the [passenger] manifest quickly had a negative ripple effect on the State Department's image in subsequent activities. Thereafter, the Department appeared to lack control over who should notify next of kin, an accurate list of next of kin, and communications with the families. (p. 101)

Some idea of how much more quickly the Department of State might, under the proposed rule, receive passenger manifest information following an aviation disaster may be gained from examining the Pan Am Flight 103 aviation disaster experience. There, the Department of State was given by Pan American an initial passenger manifest, consisting of surnames and first initials, about 7 hours after the disaster was learned of. A passenger manifest containing more complete passenger information together with contact information was provided to the Department of State about 43 hours after the disaster was learned of, and, at that time, Pan American also notified the Department of State that all families of victims had been notified. The results of compliance with the proposed rule in the case of Pan Am Flight 103 should have resulted in the provision of a

passenger manifest together with emergency contact information (to the extent that passengers chose to provide emergency contact information) to the Department of State in one to three hours after the disaster was learned of.

The Department seeks, within present authority, to achieve more prompt provision of manifest information and initial notification of families of victims in the most cost effective way that is possible. How to achieve this result is open to a good deal of uncertainty and potential controversy. In order to reduce the potential costs of the proposed rule, the Department could reduce passenger manifest requirements to the absolute minimums required by 49 USC 44909. The Department could, for example, not cover foreign carriers. However, elimination of the coverage of foreign carriers from the proposed rule would mean that about one half (40 percent) of all U.S. citizens traveling between the United States and foreign countries would be exempt from providing the passenger manifest information that is required by 49 USC 44909. Omission of this large a portion of U.S. citizens traveling between the United States and foreign countries would severely limit the ability of the Department of State to comply with the notification responsibilities that it is assigned by P.L. 101-604.

In requesting comment on requiring carriers to collect passenger date of birth (DOB) as an element of passenger manifest information, either in addition to those required by 49 USC 44909, or as a substitute for passport number/passport number and issuing country code, the Department is exploring what are the best types of information that are available to be collected in order to insure more prompt and accurate initial notification. Collecting DOB may encourage wider participation in the U.S. Customs Service's Advance Passenger Information System (APIS), which has offsetting benefits to air carriers and passengers in the form of better passenger facilitation. Moreover, as is explained more fully in the Preliminary Regulatory Evaluation, the incremental burden of a rule based on the statutorily-required information could be reduced by as much as 50 percent for any APIS-covered flight, since the information requirements of APIS and the proposed rule overlap. Since DOB is recorded for more APIS-covered passengers than is passport number, and DOB is known by passengers, whereas passengers do not usually know their passport number, collecting DOB may be, as well, less burdensome overall than collecting passport number/passport number and

issuing country code. This may even be the case if DOB is collected for *all* locations, whereas passport number/passport number and issuing country code is only envisioned to be collected for countries that require a passport for travel to them.

As is mentioned in the proposed rule, the Department seeks to the extent possible within statutory constraints to not unduly burden smaller air carriers. Our decision to allow all air carriers to choose the method of meeting the requirements of the proposed rule should benefit small air carriers who may wish to use low-technology methods, such as the approach suggested in ANPRM comments by the group, "Victims of Pan Am Flight 103," which proposed that boarding passes be redesigned to have a detachable stub that could be filled out by passengers and dropped in a box just before boarding a flight. In these comments, it was argued that such a method would require little work for the airlines and, among other things, would allow an air carrier to deliver a correct manifest to the State Department quickly by using a scanner on the stubs.

Moreover, as was stated above, the Department will consider delaying the effective date of the proposed rule for small air carriers for a reasonable amount of time.

The actual costs of a passenger manifest requirement will depend on a number of critical implementation and cost assumptions. With regard to carrier participation in the APIS program, for example, it is a goal of the U.S. Customs Service to have APIS cover 55 percent of all U.S.-arriving passengers by the end of FY 1996, and we assume that for these passengers the incremental costs of the manifest requirement could be relatively low. As is mentioned in the Preliminary Regulatory Evaluation, two U.S. air carriers have gone to the collection of APIS information for outbound passengers ("Outbound API"). The information is collected for the outbound passenger and then stored for input into the APIS system when the passenger returns to the United States. These carriers should have available for many passengers' round trips, information that duplicates some of the information that is required in the proposed rule. More air carriers may collect Outbound API once DOT implements a passenger manifest requirement. Nevertheless, subject to how air carriers participating in the APIS program choose generally to implement the overlapping passenger manifest requirement, participation in the APIS program may not influence the incremental costs of a passenger

manifest requirement on U.S. departing passengers. Thus, even if a carrier participates in APIS, passenger manifest information requirements applied to its outbound flights may still create potentially high incremental costs.

The Department is also somewhat uncertain as to the final choice of technique that carriers will choose in fulfilling their statutory obligation to collect passenger manifest information. The choice could affect our calculation of the actual economic impact of a passenger manifest requirement. Smaller carriers could have more flexibility in their choice of technique. As is explained in the Preliminary Regulatory Evaluation, air carriers that use smaller aircraft, and whose smaller passenger loads would be less likely to cause congestion at the airport, would seem to be most able to take advantage of lower technology or manual methods of collecting passenger manifest information that might take place at the airport. Doing so could result in small costs to the carriers and virtually no time forgone on the part of the passengers from whom the information was collected, if the collection was structured to occupy already available time. One such method was mentioned above and would require passengers to submit passenger manifest information on a portion of the boarding pass that is collected by air carriers prior to boarding. However, we believe that only a small portion of U.S.-citizen trips between the United States and foreign countries take place on air carriers using smaller aircraft. And, moreover, most ANPRM commenters indicated that passenger manifest information would be collected using Computer Reservation Systems (CRSs). Nonetheless, if further comment suggests that a substantial number of carriers would use low technology methods of collecting passenger manifest information, some downward adjustment of the cost estimates of proposed rule could be warranted.

Finally, the Department is concerned about the reasonableness of some of the analytical underpinnings of the comments that were submitted in response to the ANPRM and the President's Regulatory Moratorium and Review. In developing estimates of the cost of the proposed rule, the Department has relied upon these comments generally but has made adjustments to them. While the passenger manifest information collection time estimates that appear in comments seem to be plausible, the Department is very concerned about the accuracy of the (implied) cost estimates for air carrier reservation and check-in

personnel compensation. As is gone into in detail in the Preliminary Regulatory Evaluation, wages imputed from the cost estimates submitted in response to the ANPRM work out to be far higher than would have been expected. In the most extreme case, they work out to be about \$44.00 per hour or \$91,500.00 per annum. Such wage rates are difficult to reconcile and have been adjusted downward in the DOT estimates of the cost of the proposed rule. In place of them the Department has used a yearly total compensation (salary plus fringe benefits) figure based on a Bureau of Labor Statistics (BLS) proxy occupational category. This figure, in 1994 dollars, is about \$30,500.00.

However, as was shown at the beginning of this section, even using the BLS total compensation figures, Departmental estimates of the cost of the

proposed rule continue to indicate a large cost of implementing the passenger manifest information requirement in 49 USC 44909. Moreover, the Departmental estimates are based on the 40 second estimate given in the ANPRM comments of British Airways for the additional time it would take to solicit and collect, at the time of airport check-in, the passenger manifest information specified in the statute. It was also assumed in the Departmental estimates that it would take this same amount of time to solicit and collect passenger manifest information at the time of reservation.

Adding seconds to or subtracting seconds from the 40 second estimate has substantial implications for the estimates of the cost of the proposed rule. For example, a one-second

increase in the amount of time that it is expected to take to solicit/collect all passenger manifest information increases the estimated overall annual recurring costs of the proposed rule by between about \$691,000 to \$1.1 million, broken down by: U.S. air carriers \$109,900; foreign air carriers \$44,900; travel agents \$107,200; and passengers time forgone between about \$429,000 and \$858,000. A sensitivity analysis of the economic model that is used to estimate the costs of the proposed rule using values of 40, 45, 50, 55, and 60 seconds (that is, the case presented at the beginning of this section and then adding 5, 10, 15, and 20 additional seconds) as the amount of overall additional time that it is assumed to take to solicit and collect passenger manifest information yields the following results:

Type of cost	Number of seconds to solicit and collect passenger manifest information				
	40 sec.	45 sec.	50 sec.	55 sec.	60 sec.
Annual Recurring (low)	\$27.6 mil ...	\$31.1 mil ...	\$34.6 mil ...	\$38.0 mil ...	\$41.5 mil.
Annual Recurring (high)	\$44.8 mil ...	\$50.4 mil ...	\$56.0 mil ...	\$61.6 mil ...	\$67.2 mil.
—U.S. Carriers	\$4.4 mil	\$4.9 mil	\$5.5 mil	\$6.0 mil	\$6.6 mil.
—Foreign Carriers	\$1.8 mil	\$2.0 mil	\$2.2 mil	\$2.5 mil	\$2.7 mil.
—Travel Agents	\$4.3 mil	\$4.8 mil	\$5.4 mil	\$5.9 mil	\$6.4 mil.
—Passeng. time (low)	\$17.2 mil ...	\$19.3 mil ...	\$21.5 mil ...	\$23.6 mil ...	\$25.7 mil.
—Passeng. time (high)	\$34.3 mil ...	\$38.6 mil ...	\$42.9 mil ...	\$47.2 mil ...	\$51.5 mil.
Per enhanced notification (low)	\$238,200 ...	\$263,600 ...	\$289,000 ...	\$314,500 ...	\$339,900.
Per enhanced notification (high)	\$364,400 ...	\$405,700 ...	\$446,900 ...	\$488,100 ...	\$529,300.
Per one-way trip (low)	\$0.39	\$0.43	\$0.48	\$0.53	\$0.58.
Per one-way trip (high)	\$0.63	\$0.71	\$0.78	\$0.86	\$0.94.

The Department seeks to derive final estimates of the cost of the proposed rule that are as accurate as possible. Toward this end, the Department invites general comments on any and all aspects of the methods used to estimate the costs of the proposed rule that are contained in the Preliminary Regulatory Evaluation. In addition, the Department invites comments on the following six questions:

1. On average, what is the dollar amount for hourly total compensation for air carrier reservations personnel, who would be collecting passenger manifest information? What portion of the total compensation figure is for salary and for fringe benefits?
2. On average, what is the dollar amount for hourly total compensation for air carrier check-in personnel, who would be collecting passenger manifest information? What portion of the total compensation figure is for salary and for fringe benefits?
3. On average, what is the dollar amount for hourly total compensation for travel agents, who would be collecting passenger manifest

information? What portion of the total compensation figure is for salary and for fringe benefits?

4. What percentage of reservations for a flight are subsequently canceled and then the same seat is resold to someone who actually boards the flight? That is, on average, for every 100 persons that eventually board an aircraft, from the time that the flight was available to be booked how many persons have made reservations?

5. Comments received by the Department in response to the ANPRM and otherwise have indicated that, were a passenger manifest information requirement to be implemented, at many airports it would not be possible for air carriers to expand counter space and employ more check-in personnel in order to maintain existing check-in times. All other things being equal, if this is the case, and other methods can not be found for collecting additional passenger manifest information more quickly at check-in or beforehand, congestion could result at airports. Such congestion could cause an individual passenger to suffer delays as he or she

waits for other passengers to provide information, in addition to the amount of time it takes for the individual passenger to provide information. The comments received, however, offered no guidance on how to quantify these congestion costs. The Department solicits comment on how, were they to occur, such congestion costs could be integrated into the economic model in the Preliminary Regulatory Evaluation that underlies the Departmental estimates of the costs of the proposed rule. How could sensitivity analyses be performed on the congestion aspects of the resulting model?

6. The Department requests comments on the amount of fixed, one-time costs associated with the rule. From ANPRM comments, these costs would include primarily the cost of programmers' time (salaries and benefits). We ask that commenters provide information in as much detail as possible on the one-time costs associated with the proposed rule, as well as all supporting explanations of the source and derivation of the data. We specifically invite comments regarding the possible use of computer

reservations systems or other current data systems to meet the goals of the proposed rule and the estimated cost of changes to these systems.

Regulatory Flexibility Act

The Regulatory Flexibility Act was enacted by the United States Congress to ensure that small businesses are not disproportionately burdened by rules and regulations promulgated by the Government. At the same time, 49 USC 44909 mandates that "the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State." In its efforts both to comply with 49 USC 44909 and not to disproportionately burden the smaller air carriers and travel agents, the Department proposes to allow the carriers to develop their own passenger manifest data collection systems. Smaller air carriers will be free to adopt a system that minimizes the burden on them, so long as that system is capable of meeting the requirements set out in the statute. If adopted, the rule would affect air taxi operators, commuter carriers, charter operators, and possibly travel agents. Some of these entities may be "small entities" within the meaning of the Regulatory Flexibility Act. Although the rule might affect a substantial number of small entities if it is adopted as proposed, we do not believe that there would be a significant economic impact because of the flexibility provided by the proposal. We specifically request comments on whether there are significant economic impacts on small entities that we have not identified or that we should consider differently. In addition, we request comments on whether this rule would have any disproportionate impact on travel agents. Based on the information available at this time, I certify that this rule would not, if adopted as proposed, have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This regulation would apply to all air carriers and foreign air carriers that choose to serve the United States. The rule should not affect either a U.S. air carrier's ability to compete in international markets or a foreign air carrier's efforts to compete in the United States. Neither should the overall level of travel to and from the United States be affected.

Paperwork Reduction Act

This NPRM contains information collections that are subject to review by

OMB under the Paperwork Reduction Act of 1995 (P.L. 104-13). The title, description, and respondent description of the information collections are show below and an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Passenger Manifest Information.

Need for Information: The information is required by 49 USC 44909 for use by the State Department;

Proposed Use of Information: The State Department would use the information to inform passenger-designated emergency contacts about aviation disasters and to answer inquiries from foreign governments regarding aviation disasters. The information may be input into the U.S. Customs Service's Advance Passenger Information System (APIS) where it would be used to facilitate the processing of low-risk passengers, identify high-risk passengers, and facilitate the operations of air carriers, airports, and other government agencies.

Frequency: The manifests would be collected and maintained for each covered flight;

Burden Estimate: Between \$27.6 and 44.8 million per annum for air carriers, foreign air carriers, travel agents, and passengers;

Respondents: About 71.5 million passengers per year at a rate of between one or two collections per passenger; at least 1,074 U.S. air carriers, and 493 foreign air carriers. We are unable to quantify the number of travel agents that will be affected by this rule at this time;

Form(s): No particular format or form would be required;

Average burden hours per respondent; An average of about 36 seconds per collection.

Individuals and organizations may submit comments on the information collection requirements by [insert date 60 days after publication in the Federal Register] and should direct them to the docket for this proceeding and the Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, Attention: Desk Officer for DOT/OST. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism Implications

The regulation proposed herein has no direct impact on the individual states, on the balance of power in their respective governments, or on the

burden of responsibilities assigned them by the national government. In accordance with Executive Order 12612, preparation of a Federalism Assessment is, therefore, not required.

List of Subjects in 14 CFR Part 243

Air carriers, Aircraft, Air taxis, Air transportation, Charter flights, Foreign air carriers, Foreign relations, Reporting and recordkeeping requirements, Security.

Accordingly, the Department proposes to add a new part 243, in chapter II of title 14 of the Code of Federal Regulations that would read as follows:

PART 243—PASSENGER MANIFEST INFORMATION

Secs.

- 243.1 Purpose.
- 243.3 Definitions.
- 243.5 Applicability.
- 243.7 Information collection requirements.
- 243.9 Procedures for collecting and maintaining the information.
- 243.11 Transmission of information after an aviation disaster.
- 243.13 Filing requirements.
- 243.15 Conflicts with foreign law.
- 243.17 Enforcement.
- 243.19 Civil and criminal penalties.
- 243.21 Waivers.

Authority: 49 U.S.C. 40101, 40105, 40113, 40114, 41708, 41709, 41711, 41501, 41702, 41712, 44909, 46301, 46310, 46316.

§ 243.1 Purpose.

The purpose of this part is to ensure that the U.S. Department of Transportation and the U.S. Department of State have prompt and adequate information in case of an aviation disaster on specified international flights. This part is mandated by 49 U.S.C. 44909.

§ 243.3 Definitions.

Air piracy means any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent, of an aircraft.

Aviation disaster means:

(1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury or in which the aircraft receives substantial damage, and in which the death, injury or damage was caused by a crash, fire, collision, sabotage or accident;

- (2) A missing aircraft; or
- (3) An act of air piracy.

Covered flight means a flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States.) A covered flight does not include a flight in which both the origin and destination points are in the United States, nor does it include segments between U.S. cities of flights originating or terminating in a foreign country, even though some portion of the flight segment is over territory not belonging to the United States.

Emergency contact means a person or entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.

Full name means given name, middle name or initial, if any, and family name or surname.

Passenger means every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew operating the flight. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and any other person not occupying a seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part.

Passport Issuing Country Code means the standard two-letter designation for the country that issued the passport.

United States means the States comprising the United States of America, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

U.S. citizen includes United States nationals as defined in 8 U.S.C. 1101(a)(22) and lawful permanent residents of the United States.

U.S. lawful permanent resident includes those defined in 8 U.S.C. 1101(a)(20).

§ 243.5 Applicability.

This part applies to covered flights operated by air carriers and foreign air carriers.

§ 243.7 Information collection requirements.

(a) For covered flights, each U.S. air carrier shall:

(1) collect the full name and passport number and issuing country code for each passenger. Collection of a passport number and issuing country code is not

required if the passenger is not required to present his or her passport for travel to the foreign point involved. Passengers for whom this information is not obtained shall not be boarded;

(2) solicit a name and telephone number of an emergency contact from each passenger; and

(3) maintain a record of the information collected pursuant to this section as well as a record of each passenger who declines to provide an emergency contact.

(b) For covered flights, each foreign air carrier shall:

(1) collect the full name and passport number for each passenger who is a U.S. citizen or a U.S. lawful permanent resident. Collection of a passport number is not required if the passenger is not required to present his or her passport for travel to the foreign point involved. U.S.-citizen passengers or U.S. lawful permanent residents for whom this information is not obtained shall not be boarded;

(2) solicit a name and telephone number of an emergency contact from each passenger who is a U.S. citizen or a U.S. lawful permanent resident; and

(3) maintain a record of the information collected pursuant to this section as well as a record of each passenger who declines to provide an emergency contact.

§ 243.9 Procedures for collecting and maintaining the information.

Air carriers and foreign air carriers may use any method or procedure to collect, store and transmit the required information, subject to the following conditions:

(a) Information on individual passengers shall be collected before each passenger boards the aircraft on a covered flight segment.

(b) The information shall be kept for at least 24 hours after the completion or cancellation of the covered flight.

(c) To the extent that such information would otherwise be confidential, the information shall be kept confidential and shall be released only to the U.S. Department of State or U.S. Department of Transportation in the event of an aviation disaster or pursuant to U.S. Department of Transportation oversight of this part. The only exception to this requirement is that the information may be provided for use in the Advance Passenger Information System, and to other U.S. or foreign governmental entities as may be authorized by the Department of Transportation.

§ 243.11 Transmission of information after an aviation disaster.

(a) Each air carrier and foreign air carrier shall inform the Director, Office of Intelligence and Security, U.S. Department of Transportation, and the Director of American Citizen Services, Bureau of Consular Affairs, U.S. Department of State immediately upon learning of an aviation disaster involving a covered flight segment operated by that carrier.

(b) Each air carrier and foreign air carrier shall transmit a complete and accurate compilation of the information collected pursuant § 243.7 of this part to the U.S. Department of Transportation and the U.S. Department of State within 1 hour after the carrier learns of the disaster. If it is not technologically feasible or reasonable to fulfill the 1-hour requirement, then the information shall be transmitted as expeditiously as possible, but not later than 3 hours after the carrier learns of the disaster.

§ 243.13 Filing requirements.

(a) Each air carrier and foreign air carrier that operates one or more covered flights shall file with the U.S. Department of Transportation a statement summarizing how it will transmit and collect the passenger manifest information required by this part on or before the date it begins collection. This description shall include a 24-hour contact at the carrier who can be consulted concerning information to be provided to the U.S. Department of State or U.S. Department of Transportation and shall include sufficient detail to permit these Departments to develop appropriate methods of receiving the information.

(b) Each air carrier and foreign air carrier shall notify the DOT of any contact change and shall file a description of any significant change in its means of transmitting or collecting manifest information on or before the date the change is made.

(c) All filings under this section should be submitted to the Office of Intelligence and Security (S-60), Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

§ 243.15 Conflict with foreign laws.

(a) Air carriers and foreign air carriers are not required to solicit or collect information under this part in countries where such solicitation or collection would violate applicable foreign law, but only to the extent that such solicitation or collection would violate applicable foreign law.

(b) Air carriers and foreign air carriers that claim that such a solicitation or

collection would violate applicable foreign law in certain foreign countries shall inform the Office of Intelligence and Security (S-60), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 of that claim on or before the effective date of this rule, or on or before beginning service between that country and United States. Such notification shall include copies of the pertinent foreign law as well as a certified translation. Notifications will also be accepted directly from foreign governments.

(c) The U.S. Department of Transportation shall maintain an up-to-date listing of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law.

§ 243.17 Enforcement.

The U.S. Department of Transportation may at any time require an air carrier or foreign air carrier to produce a passenger manifest for a specified flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any air carrier or foreign air carrier further information about collection, storage and transmission procedures at any time. If the Department finds an air carrier's or foreign air carrier's system to be deficient, it will require appropriate modifications, which must be implemented within a specified period. In addition, the offending air carrier or foreign air carrier may be subject to enforcement action.

§ 243.19 Civil and criminal penalties.

Each air carrier or foreign air carrier that violates the provisions of this part is subject to civil and/or criminal penalties for each violation as provided by 49 U.S.C. 46301, 46310 and 46316.

§ 243.21 Waivers.

The Department may waive compliance with certain requirements of this part if an air carrier or foreign air carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad. Carriers that have signed such a Memorandum and that wish to take advantage of this shall submit two copies of the signed Memorandum to the Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation. The carrier will be informed by the Assistant Secretary for Aviation and International Affairs, or his or her designee, of the provisions of this part, if any, that are waived by the Department based on the Memorandum.

Such determination will be confirmed in writing to the carrier.

Issued in Washington, DC, on September 4, 1996.

Federico Peña,

Secretary.

[FR Doc. 96-23072 Filed 9-9-96; 8:45 am]

BILLING CODE 4910-62-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 230, 239, 240 and 249

[Release Nos. 33-7326 and 34-37624; File No. S7-23-96]

RIN 3235-AG82

Expansion of Short-Form Registration To Include Companies With Non-voting Common Equity

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today proposes amendments to rules and Forms S-3 and F-3 under the Securities Act of 1933 ("Securities Act") to include non-voting as well as voting common equity in the computation of the required \$75 million aggregate market value of common equity held by non-affiliates of the registrant.

In addition, the Commission is proposing conforming amendments to Form F-2 under the Securities Act, Forms 10-K and 10-KSB under the Securities Exchange Act of 1934 ("Exchange Act") and the definition of "Small Business Issuer" in Rule 405 and in Item 10 of Regulation S-B under the Securities Act and in Rule 12b-2 under the Exchange Act. Under the proposed revisions, the aggregate market value of voting and non-voting common equity would be included in the calculation of the amount of the required public float for issuers to qualify to use Form F-2 and to be small business issuers and in stating the amount of the public float on Forms 10-K and 10-KSB.

DATES: Comments should be received on or before October 10, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6-9, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7-23-96. Include this file

number on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Public Reference Room at the same address. Electronically submitted comment letters will be on the Commission's Internet web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT:

Mary J. Kosterlitz, Special Counsel, (202) 942-2900, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3-3, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Forms S-3¹ and F-3² under the Securities Act³ to include non-voting common equity in the computation of the required public float. Conforming changes are also proposed to be made to Forms F-2,⁴ 10-K,⁵ and 10-KSB⁶ and to the definition of "small business issuer" in Rule 405⁷ and in Item 10 of Regulation S-B⁸ under the Securities Act and in Rule 12b-2⁹ under the Exchange Act.¹⁰

I. Introduction and Background

The Commission's short-form registration statements, Forms S-3 and F-3, require as one condition to eligibility for registration of a primary offering of non-investment grade securities (such as common stock) that the company have at least \$75 million of voting stock held by non-affiliates (referred to as the "public float").¹¹ Some companies, both domestic and foreign, that have significant amounts of non-voting common stock held by non-affiliates (but not significant amounts of voting stock) are not eligible to use these forms for such an offering because non-voting stock is not included in the calculation of the required public float. The revisions proposed today would make Forms S-3 and F-3 available to these issuers provided they otherwise qualify for these forms. These changes are proposed to provide additional flexibility for registered capital raising transactions by extending the availability of the short form registration statements. The proposed revisions are

¹ 17 CFR 239.13.

² 17 CFR 239.33.

³ 15 USC 77a *et seq.*

⁴ 17 CFR 239.32.

⁵ 17 CFR 249.310.

⁶ 17 CFR 249.310b.

⁷ 17 CFR 230.405.

⁸ 17 CFR 228.10.

⁹ 17 CFR 240.12b-2.

¹⁰ 15 U.S.C. 78a *et seq.*

¹¹ See General Instruction I.B.1 of Forms S-3 and F-3. General registrant requirements for Forms S-3 and F-3 eligibility are outlined in General Instruction I.A. to these forms.

consistent with the spirit of the recommendations of the Commission's Task Force on Disclosure Simplification ("Task Force Report")¹² and with requirements included in S. 1815, the Securities Investment Promotion Act of 1996.¹³

Under the integrated disclosure system, there are three basic Securities Act registration forms: Forms S-1, S-2 and S-3.¹⁴ These forms establish three categories of registrants. Although the information required for each of these forms is the same, the method of delivering the information varies depending on the category of registrant. These methods of delivering information are: (1) Provision of information physically in the prospectus; (2) delivery with the prospectus; or (3) incorporation by reference into the prospectus from Exchange Act reports. Form S-3 permits maximum reliance on Exchange Act reports, allowing eligible issuers to use this form to incorporate information into the prospectus by reference from Exchange Act filings.¹⁵ Form F-3, the corollary to Form S-3 for foreign private issuers,¹⁶ also allows eligible registrants to incorporate information by reference from Exchange Act reports.

The Commission's rules have always conditioned the availability of short form registration for primary offerings of non-investment grade securities (such as common stock) on the issuer's having a minimum amount of voting stock held by non-affiliates. The rationale for the float condition has been to assure that physical delivery of the detailed information required by longer registration forms would not be necessary because complete and current information about the issuer was already "disseminated and accounted

for by the market place."¹⁷ Float consistently has been viewed as an indicator of analyst or market following (which in turn assures a sufficient dissemination of information to allow use of short form registration).¹⁸

Throughout the development of short form registration, the Commission has not fully articulated a reason for excluding non-voting common stock from the calculation of public float.¹⁹ Because it is not clear that analyst or market following would be affected by whether or not a company's securities carry voting rights as long as the securities are common equity securities, and in light of questions raised by issuers and others that believe non-voting common stock should be included, the Commission has decided to reexamine the basis for excluding non-voting stock in calculating public float. Consequently, the Commission is proposing today to eliminate the distinction, thus making short form registration available to a broader class of issuers.

II. Discussion of Proposals

A. Changes to Forms S-3 and F-3

The proposed amendments relating to the use of Forms S-3 and F-3 for primary offerings of non-investment grade securities would change the transaction requirements outlined in the General Instructions to the Forms to provide that non-voting common equity would be included in the calculation of the \$75 million float requirement.²⁰ These changes would be accomplished by removing the term "voting stock" as it appears in these sections and substituting the phrase "shares of voting and non-voting common equity." The meaning of the term "common equity" would be as defined in Rule 405 under the Securities Act.²¹

Comment is requested concerning whether the proposed change to include non-voting shares of common equity in calculating public float is appropriate. Specifically, the Commission solicits comment as to whether the distinction between voting and non-voting common equity affects market following of companies. Does it matter if a significant amount of the securities necessary to qualify are not voting equity securities? In addition, the Commission seeks comment as to whether it is appropriate to provide short form eligibility if the only publicly held equity securities are non-voting.

The term "common equity" as used in the proposed changes to Forms S-3 and F-3 would not include either convertible securities or preferred shares, because it is not clear that such securities, standing alone, would give rise to a market following. Comment is requested, however, as to whether there are types of preferred or convertible securities that have sufficient market following that would justify their inclusion in the calculation of public float for purposes of Forms S-3 and F-3 eligibility. Commenters urging inclusion of other securities are requested to identify the characteristics of the securities and provide information about market following of issuers with such securities.

B. Conforming Changes to Other Commission Rules and Forms Referencing Public Float

The Commission also is proposing conforming changes to Forms F-2, 10-K and 10-KSB, as well as to the definition of "small business issuer" in Rule 405 and in Item 10 of Regulation S-B under the Securities Act and to Rule 12b-2 under the Exchange Act, to provide that the public float requirement is to be computed by including the aggregate market value of both voting and non-voting common equity.

Form F-2 is used by certain foreign private issuers to register securities offerings under the Securities Act.²² One Form F-2 eligibility requirement is that, in certain cases, the foreign private issuer must have an aggregate worldwide market value of voting stock held by non-affiliates of the equivalent

¹² The Task Force Report in part seeks to eliminate rules that no longer may be necessary or appropriate for investor protection and to streamline, simplify, and modernize the overall regulatory scheme without compromising or diminishing important investor protections. See March 5, 1996, Letter from Arthur Levitt printed in Report on Task Force Simplification, March 1996. See Release No. 33-7271 (March 5, 1996) [61 FR 9848]. The report is available for inspection and copying in the Commission's Public Reference Room and is posted on the Commission's Internet Web Site (<http://www.sec.gov>).

¹³ See S. 1815, 2d Sess. § 314 (1996).

¹⁴ These three classes of forms apply to domestic issuers. Foreign private issuers have three parallel Securities Act registration forms: Forms F-1, F-2 and F-3. 17 CFR 239.0-1.

¹⁵ See Release No. 33-6383 (March 3, 1982) [47 FR 11380]. Form S-3 also allows issuers to update the issuer prospectus information through incorporation by reference of future Exchange Act filings, instead of filing post-effective amendments to the registration statement. *Id.*

¹⁶ The term "foreign private issuer" is defined in Rule 405.

¹⁷ See Release No. 33-6331 (August 6, 1981) [47 FR 41902, 41904].

¹⁸ Release No. 33-6943 (July 22, 1992) [57 FR 32461]; Release No. 33-6331 (August 6, 1981) [46 FR 41902]; Release No. 33-5923 (April 11, 1978) [43 FR 16677].

¹⁹ In connection with expansion of a predecessor short form, Form S-16, the Commission analyzed the distinction between voting equity securities and non-voting debt securities. In that context, the Commission agreed that information about companies with publicly held non-voting securities may be widely available but noted that while a \$50 million float requirement (which was the amount being adopted at the time) is appropriate for voting securities, it is not necessarily indicative of general market interest in debt securities. See Release No. 5923 (April 11, 1978) [43 FR 16677].

²⁰ The amendments proposed would not alter any other requirements of Forms S-3 or F-3, including the amount of the public float.

²¹ Rule 405 defines "common equity" as "any class of common stock, or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest."

²² See General Instruction I.A and I.B of Form F-2 for the eligibility requirements of Form F-2. This form allows certain foreign private issuers to provide some of the required prospectus information by supplying a copy of the issuer's most recent annual report on Form 20-F. Form F-2 is generally available for foreign private issuers with a 36 month reporting history; for issuers with less than 36 months of reporting, a \$75 million float requirement applies.

of \$75 million.²³ The proposed amendments would change the eligibility requirement outlined in the General Instruction to Form F-2 to indicate that non-voting common equity as well as voting common equity would be included in the calculation of the \$75 million float requirement.

Forms 10-K and 10-KSB each require registrants to state on the cover page the aggregate market value of voting stock held by non-affiliates. The information serves a number of purposes, including use by the Commission staff in considering form eligibility. As proposed to be amended, the forms would instead require a statement of the aggregate market value of voting and non-voting common equity held by non-affiliates.

The proposed amendments also would change the definition of "small business issuer" in Rule 405 and in Item 10 to Regulation S-B under the Securities Act and Rule 12b-2 under the Exchange Act. The current definition of "small business issuer" states that "an entity is not a small business issuer if it has a public float (the aggregate market value of the outstanding securities held by non-affiliates) of \$25,000,000 or more."²⁴ This definition does not specify what is meant by the term "outstanding securities." However, in the adopting release for the Small Business Initiatives, the Commission described public float as "the aggregate market value of the issuer's voting stock held by non-affiliates,"²⁵ and the staff of the Division of Corporation Finance has interpreted the float test for small business issuers in that manner. Consistent with the proposed changes to Forms S-3 and F-3, the proposed amendments to the small business issuer eligibility criteria would replace "securities" with "shares of voting and non-voting common equity."

Comment is requested as to whether these conforming changes to Forms F-2, 10-K and 10-KSB, Rule 405, Item 10 of Regulation S-B, and Rule 12b-2 are necessary or appropriate. Specifically, the Commission solicits comment as to whether the proposed changes regarding the use of non-voting as well as voting shares of common equity to calculate the public float for Forms F-2, 10-K, 10-KSB and for small business issuers are appropriate, and whether there is a basis for excluding non-voting common equity from the definition of public float in these contexts. The proposed changes

to the definition of small business issuer could cause some issuers that have non-voting common equity to become ineligible for the small business issuer disclosure system.²⁶ Notwithstanding this potential impact, the Commission believes that public float should be measured consistently for both larger and smaller issuers. Comment is requested, however, as to whether these proposed amendments would result in significant new burdens for small business issuers and, if so, whether the burden justifies a different public float test for small business issuer eligibility.

III. Request for Comment

Any interested person wishing to submit comment on the proposed amendments, as well as other matters that might have an impact on the proposed changes to rules and forms, is requested to do so. Comment is requested on the impact of the proposals from the point of view of the investing public, as well as the entities or persons making filings with the Commission. The Commission also requests comment on whether the proposed amendments, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibility under Section 23(a) of the Exchange Act.²⁷

IV. Cost-Benefit Analysis

Commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals to aid the Commission in its evaluation of the costs and benefits that may result from the changes proposed in this release. It is anticipated that these proposals will have a benefit to issuers with filing obligations that would become eligible to use short form registration, by decreasing their costs. It is also possible that a small number of issuers currently able to use the small business issuer disclosure system may have increased costs due to their inability to use this system. No

²⁶ Under the small business issuer disclosure system, eligible companies may use Forms SB-1 and SB-2 for registration under the Securities Act, Form 10-SB for registration under the Exchange Act, and Forms 10-KSB and 10-QSB for periodic reporting under the Exchange Act. These forms generally allow more streamlined disclosure than the Securities Act and Exchange Act forms for issuers that are not small business issuers. In addition, some Commission forms that are not limited to small business issuers permit specified streamlined disclosures. See, e.g. General Instruction D.3. to Form S-4, General Instruction C.3. to Form 8-K and Note G to Schedule 14A.

²⁷ 15 U.S.C. 78w(a).

detrimental effects to investors are expected.

V. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the amendments would revise forms and rules, which may increase the availability of Forms S-3, F-2 and F-3 and possibly decrease the availability of the small business disclosure system (Forms SB-1, SB-2, 10-SB, 10-KSB and 10-QSB) for some issuers.

As discussed more fully in the analysis, the proposals would affect persons that are small entities, as defined in the Commission's rules, because the proposed changes to the definition of small business issuer could cause some issuers that have non-voting common equity held by non-affiliates to become ineligible to use the small business disclosure system. The Commission estimates that approximately three percent of the small business issuers may become subject to more detailed reporting obligations in the future, or may otherwise be impacted by the rule proposals.²⁸ These estimates were not the product of a formal study, but were solely the result of estimates provided by the staff of the Division of Corporation Finance based on its expertise from the review of corporate filings. These estimates were thought by the Corporation Finance Division staff to reflect the maximum percent of companies that would no longer be eligible to use the small business issuer disclosure system. Instead, they would be required to file Forms S-1 or S-2 for registered securities offerings, Form 10 to register a class of securities under the Exchange Act, and Forms 10-Q and 10-K for periodic reporting under the Exchange Act. The Commission's Office of Economic Analysis is currently conducting a study to estimate the number of companies that would lose their small business status. The result of this study will be incorporated into the final Regulatory Flexibility Analysis. The Commission does not expect that the number of companies that would become ineligible to meet the definition of small business issuer would be significant. The Commission solicits comment on its preliminary estimates of the number of small entities that would be impacted by the proposed rules. The Commission also does not expect that

²⁸ See estimates in Section VI, "Paperwork Reduction Act," *infra*.

²³ See General Instruction I.B.2 of Form F-2.

²⁴ See Rule 405 and Item 10(a)(1) of Regulation S-B.

²⁵ See Release No. 33-6949 (July 30, 1992) [57 FR 36442].

materially increased reporting, recordkeeping and compliance burdens would result from the changes. The Commission, however, also seeks comment as to whether these proposed amendments would result in significant new burdens for small entities, and, if so, whether the burden justifies a different public float test for small business eligibility. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules and forms to be amended.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis, the nature of these amendments do not lend themselves to separate treatment, nor would they impose significant additional burdens on small entities.

Written comments are encouraged on any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting Mary J. Kosterlitz, Office of Chief Counsel, Division of Corporation Finance, Mail Stop 3-2, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Paperwork Reduction Act

Certain provisions of the proposed amendments to Forms S-3, F-2 and F-3, Rule 405 and Item 10 of Regulation S-B under the Securities Act and Rule 12b-2 under the Exchange Act contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (the "Act") (44 U.S.C. 3501 *et seq.*). The Commission has submitted its proposed revisions to the information collections required by these provisions to the Office of Management of Budget ("OMB") for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11. The titles of the affected information collections are "Form S-1," "Form S-2," "Form S-3," "Form F-1," "Form F-2," "Form F-3," "Form SB-1," "Form SB-2," "Form 10-K," "Form 10-Q," "Form 10-KSB," "Form 10-QSB," "Form 10," and "Form 10-SB."

The collections of information contained in the fourteen forms at issue are required for the registration of various securities for sale to the public under the Securities Act and periodic reporting obligations under the Exchange Act. The likely respondents to

each form are, respectively: (i) For Form S-1, generally all issuers registering offerings of securities under the Securities Act that are not eligible to use other forms; (ii) for Form S-2, generally issuers that have been reporting companies for three years and that have filed Exchange Act reports timely for the past 12 calendar months; (iii) for Form S-3, issuers that have been Exchange Act reporting companies for 12 months, have timely filed Exchange Act reports for 12 months, and if making primary offerings of non-investment grade securities, generally have a public float of at least \$75 million; (iv) for Form F-1, generally all foreign private issuers (as defined in Rule 405 under the Securities Act) registering securities under the Securities Act that are not eligible to use other forms; (v) for Form F-2, generally foreign private issuers that have filed Exchange Act reports for 36 months or, in some instances, that have a public float of at least \$75 million; (vi) for Form F-3, generally foreign private issuers that have been Exchange Act reporting companies for 12 months (and have filed at least one annual report on the appropriate form), have timely filed Exchange Act reports for 12 months, and if making primary offerings of non-investment grade securities, have a public float of at least \$75 million; (vii) for Form SB-1, generally small business issuers (as defined in Rule 405 under the Securities Act) registering up to \$10 million of securities under the Securities Act in a continuous 12 month period to be sold for cash; (viii) for Form SB-2, generally small business issuers registering securities offerings under the Securities Act; (ix) for Form 10-K, generally all issuers reporting under the Exchange Act filing annual reports that are not foreign private issuers or small business issuers; (x) for Form 10-Q, generally all issuers reporting under the Exchange Act filing quarterly reports that are not foreign private issuers or small business issuers; (xi) Form 10, generally all issuers registering under the Exchange Act that are not foreign private issuers or small business issuers; (xii) for Form 10-KSB, generally small business issuers reporting under the Exchange Act filing annual reports; (xiii) for Form 10-QSBs, generally small business issuers reporting under the Exchange Act filing quarterly reports; and (xiv) Form 10-SB, generally small business issuers registering under the Exchange Act. The estimated burden for responding to the collections of information in each form is not expected to change. Those estimates per respondent are as follows: (i) For Form

S-1: 1,267 burden hours; (ii) for Form S-2: 470 burden hours; (3) for Form S-3: 398 burden hours; (iv) for Form F-1: 1,868 burden hours; (v) for Form F-2: 559 burden hours; (vi) for Form F-3: 166 burden hours; (vii) for Form SB-1: 710 burden hours; (viii) for Form SB-2: 876 burden hours; (ix) for Form 10-K: 1,723 burden hours; (x) for Form 10-Q: 144 burden hours; (xi) for Form 10-KSB: 1,216 burden hours; (xii) for Form 10-QSB: 131 burden hours; (xiii) for Form 10: 95 burden hours; and (xiv) for Form 10 SB: 90 burden hours.

It is expected that the Commission's proposal to include non-voting as well as voting common equity in computing the required public float for use of Forms S-3, F-2, and F-3 would increase the number of issuers able to use these forms, and proportionately decrease the number of issuers that use Forms S-1, S-2 and F-1. The result would be a net overall reduction in reporting or recordkeeping burden, since Forms S-3 and F-3 provide for short form registration. The Commission's proposal to amend the definition of "small business issuer" in Rule 405 and in Item 10 of Regulation S-B under the Securities Act and in Rule 12b-2 under the Exchange Act so that the \$25 million public float maximum includes the aggregate market value of non-voting as well as voting common equity could reduce the number of issuers that would qualify as small business issuers. The result would be a commensurate decrease in the number of issuers filing Form SB-1 and SB-2. Such issuers instead would use Form S-1 or S-2. The proposal to change the definition of small business issuer in Rule 12b-2 under the Exchange Act would also result in a decrease in the number of issuers filing Forms 10-KSB, 10-QSB, and 10-SB. Such issuers would instead use Forms 10-K, 10-Q and 10, respectively.

It is estimated for the purposes of the Act that approximately 1,164 Form S-1s, 111 Form S-2s, 2,059 Form S-3s, 178 Form F-1s, 4 Form F-2s, 143 Form F-3s, 17 Form SB-1s, and 393 Form SB-2s, 6,019 Form 10-Ks, 28,934 Form 10-Qs, 887 Form 10-KSBs, 5,443 Form 10-QSBs, 82 Form 10s, and 88 Form 10-SBs are filed each year.²⁹ If the proposed amendments to Forms S-3, F-2 and F-3 were adopted it is estimated that: (1) The number of Form S-3s filed per year will increase by approximately 103 with an estimated per year increase burden of 40,994 hours in the aggregate; (2) the number of F-2s filed per year

²⁹ These estimates are based on the number of such filings made in fiscal year 1995 and assume that there are no increases or decreases each year.

will increase by 1 with an estimated increase burden of 559 hours; (3) the number of F-3s filed per year will increase by 7 with an estimated increase burden of 1,162 hours in the aggregate; (4) the number of S-1s filed per year will decrease by 92 with an estimated decrease burden of 116,564 hours in the aggregate; (5) the number of S-2s filed per year will decrease by 11 with an estimated decrease burden of 7,370 hours in the aggregate; and (6) the number of F-1s filed per year will decrease by 8 with an estimated decrease burden of 14,944 hours in the aggregate.³⁰ The total net decrease in burden is estimated at 96,162 hours.

If the proposed amendments to Rule 405 and Item 10 of Regulation S-B were adopted it is estimated that: (1) The number of Form SB-1s filed per year would decrease by approximately 1 with an estimated decrease in burden of 710 hours; (2) the number of Form SB-2s filed per year would decrease by approximately 12 with an estimated decrease in burden of 10,512 hours in the aggregate; the number of Form S-1s filed per year would increase by 12 with an estimated increase in burden of 15,204 hours in the aggregate; and the number of Form S-2s filed per year would increase by 1 with an estimated increase in burden of 470 hours. The total net increase in burden would be 4,452 hours.

If the proposed amendment to Rule 12b-2 under the Exchange Act is adopted it is estimated that: (1) The number of Form 10-KSBs filed per year would decrease by approximately 27 with an estimated per year decrease burden of 32,832 hours in the aggregate; (2) the number of Form 10-QSBs filed per year would decrease by approximately 163 with an estimated per year decrease burden of 21,353 hours in the aggregate; (3) the number of Form 10-SBs filed per year would decrease by approximately 3 with an estimated per year decrease burden of 270 hours in the aggregate; (4) the number of Form 10-Ks filed per year would increase by approximately 27 with an estimated per year increase burden of 46,521 hours in the aggregate; (5) the number of Form 10-Qs would increase by approximately 163 with an estimated per year increase burden of 23,472 hours in the aggregate; and (6) the number of Form 10s filed per year would increase by approximately 3 with

an estimated per year increase burden of 285 hours in the aggregate. The total net increase in burden is estimated at 15,823 hours.

Thus, it is anticipated that the adoption of the proposed amendments to Form S-3, F-2 and F-3 will decrease burden by an estimated 96,162 hours and the adoption of the proposed amendments to Rule 405 and Item 10 of Regulation S-B will increase burden by an estimated 4,552 hours. It is anticipated that the adoption of the proposed amendments to Rule 12b-2 under the Exchange Act will increase burden by an estimated 15,823 burden hours. Consequently, it is estimated that the adoption of all of the proposed amendments will result in a total decrease in burden of 75,787 hours.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments on the following: whether the proposed changes in the collections of information are necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; on the accuracy of the Commission's estimate of the burden of each collection of information as well as the proposed changes to the collections of information; on the quality, utility and clarity of the information to be collected; and whether the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget Attention: Desk Officer for the Securities and Exchange Commission, Office of the Information and Regulatory Affairs, Washington, D.C. 20503, with reference to File No. S7-23-96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Statutory Basis For the Proposals

The amendments to the Commission's rules and forms are proposed pursuant to Sections 6, 7, 8, 10, 19(a), and 27A of the Securities Act and Sections 12, 13, 14, 15(d), 21E, 23(a) and 35A of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 78ll, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

§ 228.10 [Amended]

2. By amending § 228.10(a)(1) by removing the word "securities" in the *Provided however* sentence immediately following § 228.10(a)(1)(iv) and adding the words "shares of voting and non-voting common equity" in its place.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

§ 230.405 [Amended]

* * * * *

4. By amending § 230.405 the definition of "Small Business Issuer" by removing the words "outstanding securities" in the *Provided however* clause and adding the words "outstanding voting and non-voting common equity" in their place.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

§§ 239.13, 239.32, 239.33 [Amended]

* * * * *

6. 17 CFR part 239 is amended by removing the words "voting stock" and adding, in their place, the words "shares of voting and non-voting common equity" in the following sections:

- (a) 17 CFR 239.13(b)(1)
- (b) 17 CFR 239.32(b)(2)(i)
- (c) 17 CFR 239.33(b)(1)

7. By revising the Instruction to § 239.13(b)(1) to read as follows:

³⁰The Commission estimates that approximately three percent of the small business issuers may become subject to more detailed reporting obligations in the future, or may otherwise be impacted by the rule proposals. See Section V, "Summary of Initial Regulatory Flexibility Analysis," *supra*.

§ 239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *
(b) Transaction requirements. * * *
(1) Primary and secondary offerings by certain registrants. * * *

Instruction to Paragraph (b)(1)

For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

8. By amending Form S-3 (referenced in § 239.13) by revising the Instruction to General Instruction I.B.1 to read as follows:

(Note: The text of Form S-3 does not and the amendments will not appear in the Code of Federal Regulations.)

Form S-3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S-3

* * * * *

B. Transaction Requirements * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

9. By revising Instruction 1 to § 239.32(b)(2) to read as follows:

§ 239.32 Form F-2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *
(b) * * *
(2) * * *

Instructions to Paragraph (b)

1. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate

market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

10. By amending Form F-2 (referenced in § 239.32) by revising the Instruction to General Instruction I.B.2.1. to read as follows:

(Note: The text of Form F-2 does not and the amendments will not appear in the Code of Federal Regulations.)

Form F-2

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form F-2

* * * * *

B. * * *

2. * * *

Instructions. 1. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding common equity shall be computed by use of the price at which the voting and non-voting common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

11. By revising the Instruction to paragraph (b)(1) of § 239.33 to read as follows:

§ 239.33 Form F-3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(b) Transaction requirements. * * *
(1) Primary offerings by certain registrants. * * *

Instruction to Paragraph (b)(1)

For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

12. By amending Form F-3 (referenced in § 239.13) by revising the General Instruction I.B.1 to read as follows:

(Note: The text of Form F-3 does not appear in the Code of Federal Regulations.)

Form F-3

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form F-3

* * * * *

B. Transaction Requirements

* * * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

13. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

§ 240.12b-2 [Amended]

14. By amending § 240.12b-2 the definition of "Small Business Issuer" by removing the words "outstanding securities" in the *Provided however* clause and adding the words "outstanding voting and non-voting common equity" in their place.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

15. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

16. By amending the front page of Form 10-K (referenced in § 249.310) by

revising the paragraph before the "Note" to read as follows:

(Note: The text of Form 10-K does not and the amendments will not appear in the Code of Federal Regulations.)

Form 10-K

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the common equity was sold, or the average bid and asked prices of such common equity, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in Rule 405, 17 CFR 230.405.)

* * * * *

17. By amending the front page of Form 10-KSB (referenced in § 249.310b) by revising the paragraph before the "Note" to read as follows:

(Note: The text of Form 10-KSB does not, and the amendments will not appear in the Code of Federal Regulations.)

Form 10-KSB

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was sold, or the average bid and asked price of such common equity, as of a specified date within the past 60 days. (See definition of affiliate in Rule 12b-2 of the Exchange Act.)

* * * * *

By the Commission.

Dated: August 30, 1996.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-22726 Filed 9-9-96; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-052]

RIN 1218-AB55

Exit Routes (Means of Egress)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed Rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to revise Subpart E of Part 1910, Means of Egress. The purpose of this revision is to rewrite the existing

requirements of Subpart E in plain English so they will be more understandable to employers, employees, and others who use them. This revision does not in any way change the regulatory obligations of employers or the safety and health protections provided to employees. To further the plain English goal, OSHA is also proposing to change the name of Subpart E from "Means of Egress" to "Exit Routes."

OSHA is proposing two alternative plain English versions of this revision to Subpart E. The first version is organized in the traditional OSHA regulatory format. The second version uses a question and answer format. OSHA invites interested parties to comment on the content and effectiveness of the proposed changes and on the plain English version of Subpart E that they prefer.

DATES: Comments and requests for hearings must be postmarked no later than November 12, 1996.

ADDRESSES: Comments and requests for hearings must be submitted in quadruplicate to the OSHA Docket Office, Docket No. S-052, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. (Telephone: 202-219-7894). Comments of 10 pages or less may be faxed to the Docket Office, if followed by hard copy mailed within two days. The OSHA Docket Office fax number is (202)-219-5046.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, OSHA Office of Information and Consumer Affairs, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone (202)-219-8148.

SUPPLEMENTARY INFORMATION:

I. Background

In 1971, acting under section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. § 655(a), OSHA adopted hundreds of national consensus standards as occupational safety and health standards. Over the ensuing twenty-five years, OSHA has become aware that these standards may be overly wordy, difficult to understand, repetitive, and internally inconsistent. Complaints about OSHA's technical, "nitpicky" standards have been repeated too many times to recount.

To make OSHA standards more "user-friendly," President Clinton, as part of the Administration's Reinventing Government initiative, together with Secretary of Labor Robert Reich and Assistant Secretary Joe Dear, has committed the Agency to reviewing

OSHA's standards "to determine which should be rewritten in plain English." OSHA's first "plain English" initiative is a proposed revision of Subpart E of Part 1910, which addresses means of egress (exit routes). In revising Subpart E, the goal of OSHA is to make its standards more understandable to those who use them. Toward this goal, the proposed revisions to Subpart E reorganize the text, remove internal inconsistencies among sections, and eliminate duplicate requirements.

In addition, the requirements of Subpart E have been rewritten using simple, straightforward, easy to understand, terms. The proposed rules are performance-oriented and shorter than the existing standards. They reduce the number of subparagraphs, and contain fewer cross-references to other OSHA standards. Each of the two proposed versions of Subpart E includes a detailed table of contents, which is intended to make the standards easier to use.

Both proposed versions leave unchanged the regulatory obligations placed on employers by Subpart E and the safety and health protections that it provides to employees. OSHA believes, however, that the revised Subpart E, which is more performance oriented than the existing Subpart, will make more compliance options available to employers.

Since OSHA is not proposing to change the substantive requirements of Subpart E, the Agency believes that the significant risk test described by the Supreme Court in *American Petroleum Institute v. Industrial Union Department* [448 U.S. 607(1980)] does not apply to this rulemaking. Further, OSHA has concluded that this rulemaking neither requires technological changes nor imposes increased costs. In fact, the proposed rule may decrease compliance costs by providing employers with more flexible compliance options. Accordingly, OSHA has determined that an analysis of the technological and economic feasibility of the standard is not necessary.

Finally, although OSHA recognizes that some portions of Subpart E may warrant updating, the Agency is not proposing to update the requirements of Subpart E at this time. Instead, the proposal addresses only one aspect of Subpart E: the overly technical language of the existing requirements. At a later date, the Agency will consider whether substantive revisions to these requirements are warranted.

II. Why Redraft OSHA Regulations in Plain English?

Since OSHA's adoption in 1971 of national consensus and established Federal standards under Section 6(a) of the Act, many of these "start-up standards" have been criticized for being written in a manner that can easily be misunderstood by employers and employees. For example, Robert Moran, former Chairman of the Occupational Safety and Health Review Commission, was an early critic of these standards, noting that they:

- Were not written in terms amenable to enforcement
- Were not exclusively concerned with worker safety (that is, requirements directed at the safety of equipment, buildings, consumers, the general public, and workers were intermingled)
- Were not specific enough so that an ordinary business person or employee could understand them
- Included "conflicts and inconsistencies."

[Moran, Cite OSHA for Violations, Occupational Safety and Health, Mar.—Apr. 1976 at 19–20].

Members of Congress, including those who had supported the Act, repeated similar criticisms of OSHA's 6(a) standards. For example, Congressman Steiger, quoting a constituent [117 Cong. Rec. 10839 (daily ed. March 29, 1971)], commented: "Perhaps large corporations have engineers who have the savvy to comprehend the 744 columns (of standards published in the Federal Register). Few businesses have."

He also complained [120 Cong. Rec. 21654 (daily ed. June 27, 1974)]:

For the small businessman without an attorney on retainer, or safety and health professional on their staff, the standards published in the Federal Register might as well be written in a foreign language.

Another Member of Congress, Mr. McKinney, noted that an employer needs "an interpreter to decipher the OSHA regulations" [120 Cong. Rec. 21654 (daily ed. June 27, 1974)]. Congressman Hungate complained that OSHA's regulations are voluminous, technical and complex, and that small businesses do not have the resources to daily monitor the Federal Register or hire engineers to interpret the technical language contained in the regulations [Id. P. 21658].

Additionally, Congressman Anderson [121 Cong. Rec. 36908 (daily ed. Nov. 17, 1975)] stated:

If OSHA can be faulted for anything, it is that it tends to be too bureaucratic and gets carried away with drawing up regulations

that are so laden with gobbledy-gook that even an FBI cryptographer would have difficulty decoding them. Pity then the poor small businessman who had not been tutored in reading gobbledy-gook and who cannot afford to hire a translator or special consultant to assist him in interpreting and implementing these standards.

The Clinton Administration's initiative to reinvent government, spearheaded by Vice President Gore, has focused renewed attention on the difficulty many employers and employees have in understanding OSHA requirements. Responding to President Clinton and Vice President Gore's challenge, in June 1995, the Department of Labor developed a complete regulatory reform strategy to "emphasize plain language to make rules more user-friendly."

This proposal begins the implementation of OSHA's goal of identifying at least three standards that can be rewritten in plain English. *Means of Egress* (Exit Routes) which is codified as Subpart E of OSHA's General Industry Standards (29 CFR 1910), was selected as the first plain English project because these rules were not technologically complex and their purpose—to protect employees in case of fire or other emergencies—was familiar.

Two alternate approaches to plain English rule writing are presented in this proposal. In redrafting other Section 6(a) standards, many of which are technologically more complex or more detailed than Subpart E, it may not be possible for OSHA to achieve the simplicity and user-friendliness of the proposed revisions to Subpart E.

III. What are OSHA's Goals in Revising Subpart E?

OSHA hopes to achieve three goals in this proposal:

- To maintain the safety and health protections provided to employees by Subpart E without increasing the regulatory burden on employers
- To create a regulation that is easily understood
- To state employers obligations in performance-oriented language to the extent possible.

Below, OSHA describes how each of these goals is served by the proposed revisions to Subpart E.

This project is a language revision project, not an effort to substantively revise OSHA's means of egress standards. Therefore, the Agency has been careful to ensure that the protections afforded to employees by Subpart E are not weakened in the revision process. Employers who were in compliance with Subpart E prior to

this proposal will continue to be in compliance with the new regulation after it becomes effective. Likewise, employees who are accustomed to relying on these OSHA requirements to ensure safe exit from the workplace during an emergency can continue to rely on those requirements with confidence.

OSHA's effort to redraft Subpart E in plain English has included a thorough, comprehensive review of the existing regulation. The Agency has reviewed all relevant OSHA interpretations of Subpart E and decisions of the Federal courts and the Occupational Safety and Health Review Commission to determine what each provision of Subpart E has meant in practice. OSHA has also reviewed comparable State regulations, existing training materials on means of egress, and current consensus standards, including the National Fire Protection Association (NFPA) Life Safety Code. This comprehensive analysis of Subpart E has enabled OSHA to reorganize Subpart E, and eliminate duplicate provisions and have confidence that the revisions will not diminish the safety and health protections provided by the existing rules.

During the revision process, OSHA has become aware that some provisions of Subpart E are outdated. Indeed, the current NFPA Life Safety Code and other consensus standards provide employers with contemporary fire safety compliance options that are not permitted by the existing rules. Where it was possible to revise the proposed language of Subpart E to allow employers the flexibility of relying on these more contemporary compliance approaches without decreasing the protectiveness of the requirements or increasing employers' obligations, OSHA has proposed to do so. For example, OSHA's existing rules require that exits lead directly outside, while recent revisions to NFPA's code permit exit routes that lead to a refuge area, particularly in high-rise buildings. The proposed revisions would recognize refuge areas as a permissible means of exit; OSHA is specifically asking for comment on this change. Another example of the increased flexibility of the of the proposed revisions relates to exit signs. Self-luminous or electroluminescent signs are now a commonplace method of alerting occupants to the location of exits in the workplace and are recognized by consensus organizations as appropriate for that purpose. Existing Subpart E, however, does not yet permit reliance on self-luminous or electroluminescent signs. The proposed revisions, however,

would permit employers to utilize such signs as an added option; current compliance methods would also continue to be permitted. In this way, OSHA has increased the flexibility of compliance for employers without reducing the safety and health protections provided to employees.

Another of OSHA's aims in revising Subpart E is to continue to rely on performance-oriented language to the extent that doing so is consistent with the maintenance of safety and health protections and does not increase the obligations of employers.

For example, the specification that exit signs use letters that are not less than six inches high and 3/4 inches wide was intended to ensure that any sign used to direct employees out of the building would be visible. In the proposed revision, OSHA has eliminated the size specification in favor of a requirement that simply states that exit signs must be clearly visible to all building occupants.

In addition, the proposed revisions to Subpart E increase the performance orientation and compliance flexibility of the standards where national consensus standards have led the way (without, of course, reducing employee protections).

For example, § 1910.37(c) contains detailed specifications for the number of persons per unit of exit width required for each means of egress. These specifications are extremely difficult for users to understand. The NFPA no longer relies on the number of persons per unit of exit width to determine adequate exit capacity. Instead, the NFPA's Life Safety Code incorporates the concept of exit geometry. Exit capacity, according to the NFPA, is determined not by width alone, but by considering the distance to be traveled to the exit and other factors affecting the flow of people out of the workplace. The performance-oriented language of the proposed regulations allows employers to consider the newer NFPA approach.

However, OSHA has *not* used performance-oriented language in revising Subpart E where the effect of doing so would:

- Eliminate a requirement that protects employee safety and health without substituting an equally effective requirement; or
- Expand an employer's compliance obligations.

For example, § 1910.37 now requires that a means of egress be at least 28 inches wide. Substituting a

performance-oriented criterion, such as a requirement that a means of egress be "of adequate width to support building occupants", would eliminate the minimum width but might also reduce the protection provided to those seeking to leave the workplace. For this reason, OSHA decided not to revise the minimum clearance requirement.

For some employers, reliance on performance-oriented regulations may create confusion as to the specific precautions necessary in a variety of situations. In the past, OSHA has used the NFPA Life Safety Code as an aid in interpreting Subpart E. OSHA intends to continue to rely on the NFPA Life Safety Code and other consensus standards as guidance in implementing performance-oriented requirements of revised Subpart E.

III. What Are the Results of OSHA's Revision to Subpart E?

The proposed revision to Subpart E has resulted in changes to the paragraph designations of existing requirements. The following table compares the proposed rule paragraph designations with the paragraph designations of the current Subpart E requirements.

COMPARISON OF PROPOSED RULE ON EXIT ROUTES WITH CURRENT SUBPART E STANDARD

Proposed rule on exit routes	Comparable Subpart E section
1910.35. What is covered by these regulations?	1910.36(a).
(b) Exits and Exits Routes Are Covered	1910.35(c)
(1) Definition Of An Exit	
(2) Definition Of An Exit Route	1910.35(a).
1910.36. What are the design requirements for exit routes?	1910.37(a), 1910.37(g)(4).
(a) An Exit Must Be Permanent	
(b) The Number Of Exit Routes Must Be Adequate	1910.36(b)(1)
(1) Two exit routes, remote from one another, must be available to provide alternate means for employees to leave the workplace safely during an emergency.	1910.36(b)(3)
(2) A single exit route is permitted where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace indicate that a single exit will allow all employees to exit safely during an emergency. Other means of escape, such as fire exits or accessible windows, should be available where fewer than two exit routes are provided.	1910.36(b)(8).
(3) More than two exit routes must be available to allow employees to leave the workplace safely during an emergency where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace reasonably suggest that reliance on two exit routes could endanger employees.	1910.37(e).
(c) An Exit Has Limited Openings	1910.37(a), 1910.37(b)(3), 1910.37(b)(4).
(d) An Exit Must Be Separated By Fire Resistant Materials	1910.37(b)(1)–(b)(2).
(e) Exit Route Access Must Be Unobstructed	1910.36(b)(4), 1910.36(d)(1), 1910.37(f)(1), 1910.37(k)(2).
(1) Free and unobstructed access to each exit route must be provided to ensure safe exit during an emergency.	
(2) The exit route must be free of material or equipment	1910.36(d)(1), 1910.37(f)(1).
(3) Employees must not be required to travel through a room which can be locked, such as a bathroom, or toward a dead end to reach an exit.	1910.37(f)(3).
(4) Stairs or a ramp must be used if the exit route is not substantially level	1910.37(j).
(f) An Exit Must Lead Outside	1910.37(h)(1).
(1) An exit must lead directly outside or to a street, walkway, refuge area, or to an open space with access to the outside.	New Compliance Option Included.

COMPARISON OF PROPOSED RULE ON EXIT ROUTES WITH CURRENT SUBPART E STANDARD—Continued

Proposed rule on exit routes	Comparable Subpart E section
(2) The street, walkway, refuge area, or open space to which an exit leads must be large enough to accommodate all building occupants likely to use that exit.	
(3) A refuge area must be:	
(i) a space along an exit route protected from the effects of fire either by separation from other spaces within the building or by its location; or	
(ii) a floor with at least two spaces separated by smoke-resistant partitions in a building where each floor is protected by an automatic sprinkler system. An automatic sprinkler system must comply with 29 CFR § 1910.159.	
(4) Exit stairs that continue beyond the floor of exit discharge must be interrupted by doors, partitions, or other effective means.	1910.37(h)(2).
(g) An Exit Door Must Be Unlocked	1910.36(b)(4), 1910.37(k)(3).
(h) A Side-hinged Exit Door Must Be Used	1910.37(f)(2).
(i) The Capacity Of An Exit Route Must Be Adequate	1910.37(c), 1910.37(d).
(j) An Exit Must Meet Minimum Height And Width Requirements	1910.37(f)(6), 1910.37(i).
(k) An Outdoor Exit Route Is Permitted	1910.37(g)(1)–(g)(5).
1910.37. What are the operation and maintenance requirements for exit routes?	
(a) The Danger To Employees Must Be Minimized.	
(1) The exit route must be maintained to minimize danger to employees during an emergency.	
(2) The exit route must be free of explosive or highly flammable furnishings or decorations	1910.36(b)(2).
(3) An exit route must not require employees to travel toward materials which burn very quickly, emit poisonous fumes, or are explosive, unless those materials are effectively shielded from the exit route.	1910.37(l)(2), 1910.37(f)(5).
(b) Lighting Must Be Adequate	1910.36(b)(6).
(c) An Exit Must Be Marked Appropriately	1910.37(f)(4).
(1) Each exit must be clearly visible and must be marked by a distinctive sign reading “Exit”	1910.36(b)(5), 1910.37(q)(1);
(2) An exit door must be free of signs or decorations that obscure its visibility	(q)(3); (q)(4); (q)(8).
(3) Signs must be posted along the exit route indicating the direction of travel to the nearest exit	1910.37(f)(4).
(4) The line-of-sight to an exit sign must be uninterrupted.	1910.36(b)(5); 1910.37(q)(5).
(5) Any doorway or passage that might be mistaken for an exit must be marked “Not an Exit” or with an indication of its actual use.	1910.37(f)(4); 1910.37(q)(3).
(6) An exit sign must be illuminated to a surface value of at least 5 foot candles by a reliable light source and must show a designated color. Self-luminous or electroluminescent signs have a minimum luminance surface value of .06 footlamberts.	1910.36(b)(5); 1910.37(q)(2), 1910.37(q)(6)–(q)(7).
(d) The Fire Retardant Properties Of Paints Or Other Coatings Must Be Maintained	New Compliance Option Included.
(e) Each Emergency Safeguard Must Be Maintained	1910.37(o).
(f) Exits Must Be Maintained During Construction And Repair	1910.37(m)–(n), 1910.38(b)(5).
(g) An Employee Alarm System Must Be Operable	1910.36(c)(1)–(c)(3).
1910.38. What are the requirements for an Emergency Action Plan?	1910.36(b)(7), 1910.37(n).
(a) An Emergency Action Plan Must Be Available For Employee Review.	1910.38(a)(1), 1910.38(a)(5)(iii).
(b) Minimum Elements Of An Emergency Action Plan	1910.38(a)(2), 1910.38(a)(4).
(c) Employee Alarm System	1910.38(a)(3).
(d) Training	1910.38(a)(5)(i).
(e) Employee Review	1910.38(a)(5)(ii), 1910.38(a)(5)(iii).
1910.39. What are the requirements for a Fire Prevention Plan?	
(a) A Fire Prevention Plan Must Be Available For Employee Review	1910.38(b)(1), 1910.38(b)(4).
(b) Minimum Elements Of A Fire Prevention Plan	1910.38(b)(2).
(c) Employee Information	1910.38(b)(4).

In revising the means of egress standards, OSHA has attempted to organize their requirements in a logical and understandable manner. OSHA has drafted this revision with the following general principles in mind:

- General provisions should appear before specific provisions or exceptions
- Important provisions should appear before less important provisions
- Frequently used provisions should appear before less frequently used provisions
- Substantive requirements should appear before procedural requirements
- Permanent provisions should appear before temporary, transitional, or “grandfather” provisions

• “Housekeeping” provisions and appendices should be placed at the end of the requirements.

OSHA has grouped the requirements around three common themes: (1) design and construction requirements for exit routes; (2) operation and maintenance requirements for exit routes; and (3) requirements for warning employees of the need to escape. For example, the design requirements for exit routes formerly were scattered both in § 1910.36 and § 1910.37. Previously, the requirement that exits discharge directly to a public street or to an open space was a general requirement found in § 1910.37(h)(1). Because the placement or location of exits is a requirement employers must address

during workplace design, that requirement has been moved to paragraph (f) of § 1910.36, which covers design of exit routes.

Reorganizing Subpart E in this manner has enabled OSHA to eliminate many duplicate provisions. In the prior version, both § 1910.36(b)(8) and § 1910.37(e) contained the design requirement that workplaces with more than one exit have two means of egress remote from one another. Now, however, § 1910.36(b) contains all requirements for the location of exit routes.

Throughout this revision, OSHA has placed the general provisions of each paragraph first, followed by any specific applications or exceptions. For example,

there is a proposed general design requirement (§ 1910.36(b)(1)) that requires employers to have two exit routes, remote from one another. Two specific exceptions follow that general requirement: single exit routes are permitted in certain circumstances if safe employee exit is possible; and more than two exit routes are required where workplace conditions suggest that reliance on only two exit routes will endanger employees (§ 1910.36(b)(2)–(3)).

Since OSHA regulates employment and places of employment, the Agency's standards are intended to impose those duties on employers that are necessary to protect employee safety and health. In the revised standards, the mandatory duty of employers to comply with the regulatory obligations set forth in Subpart E is retained. However, existing Subpart E too often addresses obligations that are not related to employee protection but pertain instead to protection of the general public or the occupants of buildings. The proposed revision limits the regulatory obligations to those relevant to workplace health and safety; buildings that are not workplaces are clearly outside the scope of the revised standards. There is an exception to this principle where the protection of employee safety and health requires an employer to assure that *all* building occupants, including employees, can evacuate a building safely. In such situations, revised Subpart E imposes a duty on employers to protect all building occupants. However, where the safety of building occupants is independent of employee safety, the revised language refers only to the protection of employees.

OSHA has revised Subpart E to state clearly that employers must comply with its requirements and indicate how compliance must be achieved. OSHA has continued the use of command words, such as "must," when the intent is to impose clear obligations on employers to take affirmative employee-protective steps. Thus, OSHA has avoided the use of such words as "should", which recommend but do not require a given action, or "may" which give the employer discretion to act unless the Agency is recommending or permitting the associated action.

The Agency believes that the proposed revisions make Subpart E more "user-friendly" and less easy to misinterpret. OSHA has reduced the level of subunits (subparagraphs or sub-subparagraphs) to make the requirements easier to locate and follow.

The proposed Question and Answer version of Subpart E is very different from the approach taken in current

OSHA standards. Each provision is written in the form in which a typical employer might ask a question about the rule, and this question is then followed by an answer that tells the employer about the applicable requirements. For example, employers frequently ask, "What are the requirements for Emergency Action Plans?" This question, now posed in § 1910.38, is followed by the answer, which consists of a description of the specific requirements for emergency action plans an employer must follow to comply with Subpart E.

Each provision of the proposed revision is preceded by a section heading that tells the reader what information can be found in that section. For example, the section heading for exterior exit routes is "An Outdoor Exit Route is Permitted." These descriptive headings help the user to locate relevant regulatory requirements. Using these section headings, OSHA has created a table of contents that precedes the proposed revisions. Focus groups evaluating the format of OSHA standards strongly recommended the addition of a table of contents as a guide to OSHA standards.

In keeping with OSHA's new "user-friendly" approach to drafting standards, the number of definitions also has been reduced from ten to two; all unused terms have been removed from the existing definitions. Because employers do not need definitions for ordinary words that are employed in a manner consistent with common usage, OSHA believes this revision will streamline the requirements and eliminate confusion. OSHA also has eliminated many cross-references to other standards so that most requirements for exit routes in general industry will now be found in Subpart E.

OSHA has incorporated plain English principles in this revision. Generally, OSHA has tried to use short, focused, sentences to keep the requirements simple. OSHA believes that a readable sentence is affirmative, declarative, and limited to a single idea or thought. Accordingly, qualifying phrases longer than a few words have been moved to separate sentences. OSHA also believes that paragraphs should be brief and be devoted to a single, unified topic.

Unnecessary technical language obscures meaning and impairs understanding. In this revision, OSHA has tried to use common words in ways that are consistent with their ordinary or accepted meaning. For example, Subpart E regulates "means of egress," a term understood by professionals but not used in everyday conversation.

Substituting the phrase "exit route" for "means of egress" will make it easier for most employers and employees to understand the requirements at first reading.

OSHA has used the active rather than the passive voice in this revision. In an active sentence, the subject performs an action. In a passive sentence, the subject is acted upon. Writers frequently use passive construction to emphasize the action instead of the actor, e.g., "The regulation was drafted," instead of "He drafted the regulation." Passive construction is less immediate and can be less compelling to the reader, as well as more ambiguous. For example, instead of "it is required that an employer * * *", OSHA now generally uses "The employer must * * *".

A positive sentence is preferred when an idea can be expressed either positively or negatively, although a negative sentence is an obvious choice when the subject of a standard is a prohibition, e.g., "No employee is permitted * * *". Consistent with the goals of this revision, OSHA has stated requirements affirmatively, rather than negatively. For example, instead of stating "no furnishing, decorations, or other objects shall be so placed as to obstruct exits, access hereto, egress therefrom, or visibility thereof," the revised language would read, "the escape route be free of material and equipment."

In drafting simpler sentences, OSHA has paired the actor (employer) with the action (conduct required or prohibited). Concise declarative sentences answer the question, "Who must do what?" In most situations covered by OSHA standards, the actor will be the employer. The proposed traditional version of Subpart E includes an introductory requirement that the employer comply with each of the requirements imposed by that section. Each section of the regulation then clearly identifies the conduct required or prohibited.

In the proposed question and answer revision of Subpart E, the actor and action are paired more closely. Since confusion might occur if conditions pertaining to the requirement or prohibition were inserted between the actor and the action, OSHA has placed the actor, action, and object close together in the sentence. For example, § 1910.37 of the proposed standard now requires that an employer comply with each duty described in that section, and paragraph (b) describes the required conduct. This proposed requirement now states, "Each exit route must be illuminated adequately." Thus, the employer's obligation is clearly

identified. Previously, the same requirement (§ 1910.37(b)(6)) stated, "In every building or structure equipped for artificial illumination, adequate and reliable illumination shall be provided for all exit facilities."

Finally, OSHA has paid careful attention to parallel structure and to the rules of grammar and punctuation in revising Subpart E.

IV. What Procedures Govern OSHA's Plain English Revision?

This proceeding to revise Subpart E differs from other OSHA rulemaking efforts because the Agency is proposing to modify only the language of the Means of Egress rule and not its substance. In the past, OSHA has waived public notice and comment when a rule contains "minor and non-controversial" changes. However, OSHA has decided against that approach in this rulemaking process in order to give public notice, and receive comments, about the Agency's revision of its standards into plain English.

The Agency expects to receive three types of public comments:

- Comments from interested parties on whether they perceive the two revised, plain English versions of Subpart E as providing levels of safety and health protection that are as effective as those currently in force. Where interested parties identify provisions of the proposed plain English rules that do not meet this criterion, OSHA expects to make changes to ensure that the final rule meets the Agency's goal of imposing no new burdens on employers and maintaining safety and health protections for employees.

- Comments by interested parties on their preference for the "traditional" plain English version of Subpart E or the "question and answer" version of Subpart E.

- Comments from interested parties identifying sections of Subpart E that are out-of-date and explaining why OSHA should substantively modify these provisions. OSHA will take such comments into consideration in setting its standard-setting priorities.

Because of the limited scope and purpose of this rulemaking, OSHA hopes to expedite the issuance of a final standard.

If the Agency receives significant objections to its proposal or, in the unlikely event that issues are raised that have not been fully considered in developing the proposed revision, OSHA will provide public notice of this fact and proceed with further rulemaking under section 6(b) of the Act.

V. What Legal Considerations Govern OSHA's Plain English Revisions?

OSHA does not believe that the significant risk analysis that the Agency usually performs prior to proposing a safety standard is necessary here. In *Industrial Union Department v. American Petroleum Institute*, 448 U.S. 607 (1980), the Supreme Court ruled that section 3(8) of the Act, which defines an occupational safety and health standard, requires the Agency, as a threshold matter, to determine whether the hazard it proposes to regulate poses a significant risk in the workplace and that a new, lower standard is "reasonably necessary and appropriate" to reduce the risk posed to workers. OSHA believes that an analysis of significant risk is not required here and, indeed, would not be helpful because the Agency is proposing no substantive revisions to the requirements of Subpart E. Because this proposal neither imposes new regulatory burdens nor impacts safety and health protection, any effort to measure the "benefits" of this effort would not be productive.

This does not mean that the Agency believes that this effort will not yield substantial benefits. To the contrary, rules written in plain English are easier for employers and employees to follow and understand. Ease of understanding should facilitate compliance by employers. With OSHA's limited resources, any effort that can substantially increase opportunities for compliance without sacrificing employee safety and health protection will have long-term benefits.

OSHA also believes that this proceeding neither requires technological changes nor imposes increased compliance costs on employers. Indeed, employers may save money. Therefore, OSHA does not believe an analysis of the economic or technological feasibility of the proposal is necessary. See *American Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490 (1981). Likewise, Executive Order 12866 does not require that OSHA prepare an Economic Analysis for this rulemaking.

Finally, OSHA does not believe that section 6(b)(8) applies to this proceeding. Section 6(b)(8) requires OSHA to provide an explanation when a rule differs substantially from an existing national consensus standard. OSHA does not view the revisions to Subpart E as differing from the provisions of the national consensus standard, because the agency is modifying the wording of Subpart E and not its substance. Therefore, the requirements imposed by Subpart E will

remain comparable to those imposed by the national consensus standard upon which Subpart E was based. Furthermore, OSHA has evaluated current consensus standards addressing means of egress and has concluded that the requirements of Subpart E are consistent with those of these national consensus standards.

The current requirements contained in § 1910.38 address both employee action plans (§ 1910.38(a)) and fire prevention plans (§ 1910.38(b)). OSHA is proposing that § 1910.38 continue to contain requirements for emergency action plans, but that a new section, § 1910.39 contain requirements for fire prevention plans. Therefore, OSHA is proposing that the appendix to Subpart E be revised to reflect the new section designation for fire prevention plans. The Agency, however, is not proposing any changes to the text of the Subpart E appendix.

Summary of Economic Impact Analysis and Certification of No Significant Impact

Because the proposed rule for Means of Egress (proposed to be renamed "Exit Routes") will impose no obligations on employers beyond those imposed by the existing rule, which has been in effect since 1971, OSHA has not conducted a preliminary economic analysis to accompany the proposed rule. Because the proposed rule will have no economic impacts, the Agency certifies that it will have no significant impacts on a substantial number of small entities. This certification is necessitated by the Regulatory Flexibility Act (as amended, 1996).

Public Participation

Interested parties are invited to submit written data, views, and comments with respect to this proposed revision. These comments must be postmarked on or before November 12, 1996. Comments are to be submitted in quadruplicate, or in 1 original (hard copy) and 1 disk (3½" or 5¼") in WordPerfect 5.0, 5.1, or 6.0, or ASCII, to the Docket Office, Docket No. S-052, Room N2625, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, DC. 20210.

All written comments, views, data, and arguments received within the specified comment period will be made part of the record and will be available for public inspection and copying at the above Docket Office address.

Requests for an informal public hearing on objections to the proposed rule, pursuant to § 6(b)(3) of the Occupational Safety and Health Act (29 U.S.C. 655(b)(3)), must be submitted to

the Docket Office at the above address, and postmarked no later than November 12, 1996. Hearing requests must comply with the following requirements: they must include the name and address of the objector; they must specify with particularity the provision of the proposed rule to which the objection is taken, and must state the grounds therefore; and they must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.

State Plan States

The 25 States and Territories with their own OSHA-approved occupational safety and health plans must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

List of Subjects in 29 CFR Part 1910

Means of egress, Exit, Exit route, Emergency action plan, Fire prevention plan, Occupational safety and health.

Authority

This document was prepared under the authority of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657.), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR Part 1911, it is hereby proposed to amend 29 CFR Part 1910 as set forth below.

Signed at Washington, D.C., this 4th day of September 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

29 CFR Part 1910 would be amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The Authority citation for Subpart E of 29 CFR Part 1910 would continue to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 1-90 (55 FR 9033), as applicable.

2. Subpart E—Means of Egress would be amended by revising §§ 1910.35 through 1910.39 as follows [traditional text version]:

Subpart E—Exit Routes

§ 1910.35. Coverage.

(a) *Every Employer Is Covered.* This subpart requires a general industry employer to provide exit routes for employees to leave the workplace safely during emergencies. This subpart does not apply to mobile workplaces, such as vehicles or vessels.

(b) *Exits and Exit Routes Are Covered.*

(1) *Definition Of An Exit.* The term "exit" refers to that portion of the exit route that generally is separated from other areas to provide a protected way of travel out of the workplace.

(2) *Definition Of An Exit Route.* The term "exit route" means a continuous and unobstructed path of exit travel from any point within a workplace to safety outside. An exit route generally consists of three parts: access to the exit; the exit, which provides a way of travel out of the workplace; and the way from the exit to the outside. An exit route includes all vertical and horizontal areas.

§ 1910.36. Design requirements for exit routes.

(a) *An Exit Must Be Permanent.* Each exit must be a permanent part of the workplace.

(b) *The Number Of Exit Routes Must Be Adequate.* (1) At least two exit routes, remote from one another, must be available to provide alternate means for employees to leave the workplace safely during an emergency.

(2) A single exit route is permitted where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace indicates that a single exit will allow all employees to exit safely during an emergency. Other means of escape, such as fire escapes or accessible windows, should be available where only one exit route is provided.

(3) More than two exit routes must be available to allow employees to leave the workplace safely during an emergency where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace reasonably suggests that reliance on two exit routes could endanger employees.

(c) *Openings Into An Exit Must Be Limited.* An exit must have only those openings necessary to permit access to, or exit from, occupied areas of the workplace. An opening into an exit must be protected by a self-closing fire door that remains closed. Each fire door, its frame, and its hardware must be listed or approved by a nationally recognized testing laboratory.

Note to paragraph (c): 29 CFR 1910.155(c)(3)(iv)(A) defines "listed", 29 CFR § 1910.7 defines a "nationally recognized testing laboratory.", and 29 CFR § 1910.155(c)(3) defines "approved."

(d) *An Exit Must Be Separated By Fire Resistant Materials.* Construction materials used to separate an exit must have at least a 1-hour fire resistance rating if the exit connects three stories or less. Construction materials used to separate an exit must have at least a 2-hour fire resistance rating if the exit connects 4 stories or more.

(e) *Exit Route Access Must Be Unobstructed.* (1) Free and unobstructed access to each exit route must be provided to ensure safe exit during an emergency.

(2) The exit route must be free of material or equipment.

(3) Employees must not be required to travel through a room that can be locked, such as a bathroom, or toward a dead end to reach an exit.

(4) Stairs or a ramp must be used if the exit route is not substantially level.

(f) *An Exit Must Lead Outside.* (1) An exit must lead directly outside or to a street, walkway, refuge area, or to an open space with access to the outside.

(2) The street, walkway, refuge area, or open space to which an exit leads must be large enough to accommodate all building occupants likely to use that exit.

(3) A refuge area must be:

(i) a space along an exit route protected from the effects of fire either by separation from other spaces within the building or by its location; or

(ii) a floor with at least two spaces separated by smoke-resistant partitions, in a building where each floor is protected by an automatic sprinkler system. Automatic sprinkler systems must comply with 29 CFR 1910.159.

(4) Exit stairs that continue beyond the floor of exit discharge must be interrupted by doors, partitions, or other effective means at the floor of exit discharge to assure that the direction of exit travel is clear to employees.

(g) *An Exit Door Must Be Unlocked.* An exit door must be able to be readily opened from the inside without keys, tools, or special knowledge. A device that locks only from the outside, such as

a panic bar, is permitted. An exit door must be free of any device or alarm, which, if it fails, could restrict emergency use of an exit.

Note to paragraph (g): An exit door may be locked or blocked from the inside in a mental, penal, or correctional institution, if supervisory personnel are continuously on duty and a plan exists to remove occupants during an emergency.

(h) *A Side-Hinged Exit Door Must Be Used.* A side-hinged exit door must be used to connect any room to an exit route. A door that connects any room to an exit route must swing out if the room may be occupied by more than 50 persons or highly flammable or explosive materials may be located inside.

(i) *The Capacity Of An Exit Route Must Be Adequate.* Each exit route must support the maximum-permitted occupant load for each floor served by the exit route. The capacity of an exit must not decrease with the direction of exit travel.

(j) *An Exit Must Meet Minimum Height And Width Requirements.*

(1) The exit route must be at least 6 feet, 8 inches high at all points.

(2) An exit route must be at least 28 inches wide at all points between handrails. An exit route must be wider than 28 inches if necessary to accommodate the expected occupant load.

(3) Objects that project into the exit route must not reduce the minimum height and width of the exit route.

(k) *An Outdoor Exit Route Is Permitted.* (1) An outdoor exit route is permitted if it meets the requirements for an indoor exit route and the following additional requirements:

(i) the exit route must have guardrails to protect unenclosed sides;

(ii) the exit route must be covered if accumulation of snow or ice is likely and is not removed regularly;

(iii) the exit route must be reasonably straight with smooth, solid, substantially level floors; and

(iv) the exit route must have no dead ends longer than 20 feet.

§ 1910.37. Operation And Maintenance Requirements For Exit Routes.

(a) *The Danger To Employees Must Be Minimized.*

(1) Each exit route must be maintained to minimize danger to employees during an emergency.

(2) Each exit route must be free of explosive or highly flammable furnishings and decorations.

(3) An exit route must not require employees to travel toward materials that burn very quickly, emit poisonous fumes, or are explosive, unless those

materials are effectively shielded from the exit route.

(b) *Lighting Must Be Adequate.* Each exit route must be illuminated adequately.

(c) *An Exit Must Be Marked Appropriately.* (1) Each exit must be clearly visible and must be marked by a distinctive sign reading "Exit."

(2) An exit door must be free of signs or decorations that obscure its visibility.

(3) Signs must be posted along the exit route indicating the direction of travel to the nearest exit.

(4) The line-of-sight to an exit sign must be uninterrupted.

(5) Any doorway or passage that might be mistaken for an exit must be marked "Not an Exit" or with an indication of its actual use.

(6) An exit sign must be illuminated to a surface value of at least 5 foot candles by a reliable light source and must show a designated color. Self-luminous or electroluminescent signs must have a minimum luminance surface value of .06 footlamberts.

(d) *The Fire Retardant Properties Of Paints Or Other Coatings Must Be Maintained.* The fire retardant properties of paints or other coatings used in the workplace must be maintained.

(e) *Each Emergency Safeguard Must Be Maintained.* Each safeguard to protect employees during an emergency (e.g., sprinkler systems, alarm systems, fire doors, exit lighting) must be maintained in proper working order.

(f) *Exits Must Be Maintained During Construction And Repair.*

(1) Employees must not occupy a workplace under construction until an adequate number of exit routes that complies with these rules is available for the portion of the workplace to be occupied.

(2) Employees must not occupy a workplace during repair or alteration unless all exits and existing fire protection are maintained or alternate fire protection is provided that ensures an equivalent level of safety.

(3) Flammable or explosive materials used during construction or repair must not expose employees to hazards not otherwise present in the workplace or impede emergency escape from the workplace.

(g) *An Employee Alarm System Must Be Operable.* An operable employee alarm system with a distinctive signal to warn employees of fire or other emergencies must be installed and maintained, unless employees can see or smell a fire or other hazard so that it would provide adequate warning to them. The employee alarm system must

comply with the requirements of 29 CFR § 1910.165.

§ 1910.38. Requirements for an Emergency Action Plan.

(a) *Development of An Emergency Action Plan.*

(1) Whenever another OSHA standard requires an employer to develop an emergency action plan, the plan must comply with this section and cover each part of the workplace.

(2) The plan must be in writing, be kept in the workplace, and be made available to employees on request, except that

(3) An employer with 10 or fewer employees in a workplace may communicate the plan orally to employees rather than develop a written plan.

(b) *Minimum Elements Of An Emergency Action Plan.* An emergency action plan must include:

(1) Procedures for emergency evacuation, including type of evacuation and exit route assignments;

(2) Procedures to account for all employees after evacuation;

(3) Procedures for reporting a fire or other emergency;

(4) Procedures to follow for emergency operation or shut down of critical equipment before evacuation;

(5) Procedures to follow for rescue and medical duties; and,

(6) Names or job titles of employees to be contacted to get more information about the duties of employees under the plan.

(c) *Employee Alarm System.* The employer must install and maintain an employee alarm system. The alarm system must use a distinctive signal for each purpose and comply with 29 CFR § 1910.165.

(d) *Training.* An employer must designate employees to assist in the safe emergency evacuation of other employees. An employer must ensure that the designated employees receive training in emergency evacuation procedures.

(e) *Employee Review.* An employer must review the emergency action plan with each employee covered by the plan:

(1) When the plan is developed or the employee is assigned initially to the job;

(2) When the employee's responsibilities under the plan change; and,

(3) When the plan is changed.

§ 1910.39. Requirements for a fire prevention plan.

(a) *Development of A Fire Prevention Plan.* (1) Whenever another OSHA standard requires an employer to

develop a fire prevention plan, the plan must comply with this section and cover each part of the workplace.

(2) The plan must be in writing, be kept in the workplace, and be made available to employees on request; except that

(3) An employer with 10 or fewer employees in the workplace may communicate the plan orally to employees rather than develop a written plan.

(b) *Minimum Elements Of A Fire Prevention Plan.* A fire prevention plan must include:

(1) A list of all major fire hazards, including proper handling and storage procedures for hazardous materials, potential ignition sources and their control, and the type of fire protection equipment necessary to control each major hazard;

(2) Procedures to control accumulations of flammable and combustible waste materials;

(3) Procedures for regular maintenance of safeguards installed on heat producing equipment to prevent accidental ignition of combustible materials;

(4) Names or job titles of employees responsible for maintaining equipment to prevent or control sources of ignition or fires; and,

(5) Names or job titles of employees responsible for control of fuel source hazards.

(c) *Employee Information.* The employer must:

(1) inform employees of the fire hazards to which they are exposed; and

(2) review with each employee those parts of the fire prevention plan necessary for self-protection upon initial assignment to a job.

3. Subpart E—Means of Egress would be amended by revising §§ 1910.35 through 1910.39 as follows [Question and Answer version]:

SUBPART E—EXIT ROUTES

§ 1910.35. Coverage.

(a) *What is covered by these regulations?* These regulations require every general industry employer to provide exit routes that allow employees to leave the workplace safely during an emergency. These regulations do not apply to mobile workplaces, such as vehicles or vessels.

(b) *What is an exit?* The term “exit” refers to the portion of an exit route that is generally separated from other areas to provide a protected way of travel out of the workplace.

(c) *What is an exit route?* The term “exit route” means a continuous and unobstructed path of exit travel from

any point within a workplace to safety outside. An “exit route” generally consists of three parts: access to the exit; the exit, which provides a way of travel out of the workplace; and the way from the exit to the outside. An “exit route” includes all vertical and horizontal areas along the route.

§ 1910.36. The Design of Exit Routes.

(a) *Must exits be a permanent part of the workplace?* Yes, an employer must ensure that each exit is a permanent part of the workplace.

(b) *How many exit routes must be available in the workplace?* An employer must ensure that at least two exit routes are available to permit prompt escape during an emergency of all employees and other building occupants. The exit routes must be as far away from one another as is practicable so that if the route to one exit is blocked by fire or smoke, employees may escape safely using the alternate exit route. In many instances, more than two exit routes are necessary where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace suggests that reliance on two exit routes may endanger employees. A single exit route is permitted where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace indicates that a single exit will allow all employees to exit safely during an emergency. Other means of escape, such as fire exits or accessible windows, should be available where only one exit route is provided.

(c) *What openings are permitted into an exit?* An employer must ensure that an exit has only those openings necessary to permit access to, or exit from, occupied areas of the workplace. An opening into an exit must be protected by a self-closing fire door that remains closed. Each fire door, its frame, and its hardware must be listed or approved by a nationally recognized testing laboratory.

Note to paragraph (c): 29 CFR § 1910.155(c)(3)(iv)(A) defines “listed”, 29 CFR § 1910.7 defines a “nationally recognized testing laboratory.”, and 29 CFR § 1910.155(c)(3) defines “approved.”

(d) *What types of material may be used in exit construction?* An employer must ensure that construction materials used to separate an exit have at least a one-hour fire resistance rating if the exit connects three stories or less. If the exit connects four stories or more, the employer must ensure that construction materials used to separate the exit have at least a two-hour fire resistance rating.

(e) *What is required to ensure that employees have access to exit routes*

during an emergency? An employer must ensure that there is free and unobstructed access to each exit route to ensure safe exit from the workplace during an emergency. No materials or equipment may be placed, either permanently or temporarily, along the exit route. The employer must ensure that, to reach an exit, no employee is required to travel through a room which can be locked, such as a bathroom, or to a dead end. Stairs or a ramp must be used if the exit route is not substantially level.

(f) *Where must exits discharge?* An employer must ensure that each exit leads directly outside to a street, walkway, refuge area, or open space with access to the outside. The street, walkway, refuge area, or open space to which an exit leads must be large enough to accommodate all building occupants likely to use the exit. Exit stairs that continue beyond the floor of exit discharge must be interrupted by doors, partitions, or other effective means at the floor of exit discharge to assure that the direction of exit travel is clear to employees. For the purposes of this section, a refuge area is:

(1) a space along an exit route that is protected from the effects of fire either by means of separation from other spaces within the building or by its location; or

(2) a floor with at least two spaces separated from each other by smoke-resistant partitions, in a building protected throughout by an automatic sprinkler system that complies with 29 CFR 1910.159.

(g) *Can exit doors be locked?* An employer must ensure that an exit door can be readily opened from the inside without keys, tools, or special knowledge. A device that locks only from the outside, such as a panic bar, is permitted. An employer must ensure that the exit door is free of any device or alarm which, if it fails, could restrict emergency use of an exit. An exit door may be locked from the inside in mental, penal, or correction facilities only if supervisory personnel are continuously on duty and a plan exists to remove occupants from the facility during an emergency.

(h) *What are the requirements for exit doors?* An employer must ensure that a side-hinged door is used to connect any room to an exit route. A door to an exit should swing out from a room.

A door that connects any room to an exit route must swing out if the room is likely to be occupied by more than 50 people or if highly flammable or explosive materials may be located inside.

(i) *What is the required capacity for exit routes?* An employer must ensure that each exit route supports the maximum-permitted occupant load for each floor served by the exit route. The capacity of an exit may not decrease with the direction of exit travel.

(j) *What are the height and width requirements for exit routes?* An employer must ensure that the exit route must be at least 6 feet, 8 inches high at all points. An employer must ensure that the exit route is at least 28 inches wide at all points between handrails. An exit route must be wider than 28 inches if necessary to accommodate the expected occupant load. Objects that project into the exit route must not reduce the minimum height and width of an exit route.

(k) *Are there additional requirements for exit routes that are outside the building?* An outdoor exit route is permitted if it meets the requirements for an indoor exit route and the following additional requirements:

- (1) the exit route has guardrails to protect unenclosed sides;
- (2) the exit route is covered if accumulation of snow or ice is likely and is not removed regularly;
- (3) the exit route is reasonably straight with smooth, solid, substantially level floors; and
- (4) the exit route has no dead ends longer than 20 feet.

§ 1910.37. Operation and Maintenance of an Exit Route.

(a) *How must an employer maintain the workplace to protect employees during an emergency?* An employer must maintain the workplace to minimize the dangers to employees during an emergency. An employer must keep the workplace free of explosive or highly flammable furnishings and other decorations. An exit route must not require employees to travel toward materials that burn very quickly, emit poisonous fumes, or are explosive, unless those materials are effectively shielded from the exit route.

(b) *Must exit routes be lit?* Yes, an employer must ensure that each exit route is illuminated adequately.

(c) *Must exit routes be marked?* Yes, an employer must ensure that each exit clearly is visible and is marked by a distinctive sign reading "Exit." The employer must ensure that an exit door is free of decorations or signs that obscure its visibility. Signs must be posted along the exit route indicating the direction of travel to the nearest exit. The employer must ensure that the line-of-sight to an exit sign is uninterrupted. Any doorway or passage that might be mistaken for an exit must be marked

"Not an Exit" or with an indication of its actual use. The employer must ensure that an exit sign is illuminated to a surface value of at least 5 foot candles by a reliable light source and shows a designated color. Self-luminous or electroluminescent signs that have a minimum luminance surface value of .06 footlamberts are permitted.

(d) *What are the requirements for maintaining fire retardant paints?* An employer must maintain the fire retardant properties of paints or other coatings used in the workplace.

(e) *Must fire safeguards be maintained?* Yes, an employer must ensure that each safeguard to protect employees during an emergency is maintained in proper working order.

(f) *Are there additional requirements for maintaining exit routes during construction and repair?* Yes, three special rules apply to exit routes during construction and repair. During new construction, an employer must ensure that employees do not occupy a workplace until an adequate number of exit routes that comply with these rules is available for the portion of the workplace employees will occupy. During repair and alterations, an employer must ensure that employees do not occupy an existing workplace unless all exits and existing fire protection are maintained or alternate fire protection is provided that ensures an equivalent level of safety. An employer also must ensure that flammable or explosive materials used during construction or repair do not expose employees to hazards not otherwise present in the workplace or impede emergency escape from the workplace.

(g) *Are employee alarm systems required?* An employer must ensure that an operable employee alarm system with a distinctive signal to warn employees of fire or other emergencies is installed and maintained, unless employees can see or smell a fire or other hazard so that it would provide adequate warning to them. The employee alarm system must comply with 29 CFR § 1910.165.

§ 1910.38. Emergency Action Plans.

(a) *When is an employer required to develop an emergency action plan?* An employer must develop an emergency action plan whenever another OSHA standard requires one. This rule governs what the employer must include in the plan.

(b) *Must the emergency action plan be in writing?* An employer must keep a written emergency action plan in the workplace and make it available to employees at their request, except that

an employer with 10 or fewer employees in the workplace may communicate the plan orally to employees rather than develop a written plan.

(c) *What is required to be included in an emergency action plan?* An emergency action plan must include at a minimum:

- (1) procedures for emergency evacuation, including type of evacuation and exit route assignments;
- (2) procedures to account for all employees after evacuation;
- (3) procedures for reporting a fire or other emergency;
- (4) procedures to follow for emergency operation or shut down of critical equipment before evacuation;
- (5) procedures to follow for rescue and medical duties; and,
- (6) names or job titles of employees to be contacted to get more information about the duties of employees under the plan.

(d) *Must an emergency plan include an employee alarm system?* Yes, an employer must install and maintain an employee alarm system. The alarm system must use a distinctive signal for each purpose and comply with 29 CFR 1910.165.

(e) *Does an employer have to designate employees to assist others in evacuation?* An employer must designate employees to assist in the safe emergency evacuation of other employees. The employer must ensure that these designated employees receive training in emergency evacuation procedures.

(f) *How often must an employer inform employees of their duties under an emergency action plan?* An employer must review the emergency action plan with each employee covered by the plan;

- (1) when the plan is developed or the employee is assigned initially to the job;
- (2) when the employee's responsibilities under the plan change; and
- (3) when the plan is changed.

§ 1910.39. Fire Prevention Plans.

(a) *When is an employer required to have a fire prevention plan?* An employer is required to have a fire prevention plan when another OSHA standard requires it. This section governs what the employer must include in the plan.

(b) *Must the fire prevention plan be in writing?* Employers must keep a written fire prevention plan in the workplace and make it available to employees at their request. However, an employer with 10 or fewer employees in the workplace may communicate the plan

orally to employees rather than develop a written plan.

(c) *What is required to be included in a fire prevention plan?* A fire prevention plan must include at a minimum:

(1) a list of all major fire hazards, including proper handling and storage procedures for hazardous materials, potential ignition sources and their control, and the type of fire protection equipment necessary to control each major hazard;

(2) procedures to control accumulations of flammable and combustible waste materials;

(3) procedures for regular maintenance of safeguards installed on heat producing equipment to prevent accidental ignition of combustible materials;

(4) names or job titles of employees responsible for maintaining equipment to prevent or control sources of ignition or fires; and,

(5) names or job titles of employees responsible for control of fuel source hazards.

(d) *Must employers inform employees of the fire hazards at the workplace?*

Yes, an employer must inform employees of the fire hazards to which they are exposed. The employer must review with each employee those parts of the fire prevention plan necessary for self-protection upon initial assignment to a job.

Appendix to Subpart E—[Amended]

4. The appendix to Subpart E would be amended by inserting the heading: “§ 1910.39 Fire prevention plans” before the paragraph designated as “4. Fire prevention housekeeping.”

5. The appendix to subpart E would be amended by redesignating the paragraph: “Fire prevention housekeeping” from “4.” to “1.”

6. The appendix to Subpart E would be amended by redesignating the paragraph: “Maintenance of equipment under the fire prevention plan” from “5” to “2.”

[FR Doc. 96-22926 Filed 9-9-96; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO-030-FOR]

Colorado Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the “Colorado program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Colorado’s statutory provisions pertaining to (1) definitions, (2) development of rules no more stringent than SMCRA, (3) requirements for permit applications, (4) material damage resulting from subsidence caused by underground coal mining operations, (5) improvidently issued permits, (6) release of performance bonds, (7) entities and operations which are or are not subject to the requirements of the act, (8) authority to apply for funds the administration and fulfillment of the requirements of an abandoned mine reclamation program, and (9) creation of a Colorado coal mine subsidence protection program. to clarify ambiguities and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., M.D.T., October 10, 1996. If requested, a public hearing on the proposed amendment will be held on October 7, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., M.D.T., on September 25, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below. Copies of the Colorado program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM’s Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202-5733

Michael B. Long, Director, Division of Minerals and Geology, Department of Natural Resources, 1313 Sherman St., Room 215, Denver, Colorado 80203, Telephone: (303) 866-3567

FOR FURTHER INFORMATION CONTACT:

James F. Fulton, Telephone: (303) 844-1424.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (45 FR 82173). Subsequent actions concerning Colorado’s program and program amendments can be found at 30 CFR 906.11, 906.15, and 906.16.

II. Proposed Amendment

By letters dated August 13 and 27, 1996, Colorado submitted a proposed amendment (administrative record No. CO-680) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the proposed amendment at its own initiative. Colorado proposed to revise the following provisions of the Colorado Surface Coal Mining Reclamation Act, Colorado Revised Statutes (C.R.S.):

C.R.S. 34-33-103(1), definition of “Administrator,” to mean the head of the Office of Mined Land Reclamation in the Division of Minerals and Geology in the Department of Natural Resources;

C.R.S. 34-33-103(7), definition of “Division,” to mean the Division of Minerals and Geology in the Department of Natural Resources;

C.R.S. 34-33-103(13.5), definition of “Office,” to mean the Office of Mined Land Reclamation;

C.R.S. 34-33-103(14), the definition of “Operator,” to include any person who intends to remove more than two hundred and fifty tons of coal from coal mine waste disposal facilities;

C.R.S. 34-33-103(21), the definition of “Person,” to include (1) an Indian Tribe conducting surface coal mining and reclamation operations outside Indian lands, and (2) any agency, unit, or instrumentality of Federal, State or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government;

C.R.S. 34-33-103(26)(a), the definition of “Surface coal mining operations,” to (1) include removal of coal from coal mine waste disposal facilities, and (2) delete the exemption for the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale;

C.R.S. 34-33-108 (1) and (2), concerning the authority of the Mined Land Reclamation Board (MLRB) to promulgate rules and regulations, to (1) state that Colorado rules and regulations shall be no more stringent than required to be as effective as the counterpart Federal regulations, unless MLRB makes a specific finding that either protection of the public safety or the environment requires a more stringent, and (2) provide ninety days prior to automatic repeal of a State rule after its counterpart Federal regulation has been repealed and allow, upon request, prior to repeal of the State rule, a rule-making hearing;

C.R.S. 34-33-110(4), concerning the requirement that an applicant file a copy of a permit application with the county clerk and recorder of the county where the operations are proposed to occur, to authorize MLRB to specify by rule any other public office;

C.R.S. 34-33-115(1)(c), to allow an application for extension of the area covered by a permit, except incidental boundary revisions, to be made by an application for either a permit revision or a new permit;

C.R.S. 34-33-121(2)(a) (II) and (III), by (1) adding the requirement for an operator, if there is material damage resulting from subsidence caused by underground coal mining operations, to either promptly repair the damage by rehabilitating, restoring, or replacing the damaged occupied residential dwelling and related structures or non-commercial building, or compensate the owner in the full amount of the diminution in value; and (2) stating that nothing in this section shall be construed to prohibit or interrupt underground coal mining operations (rather than the standard method of room and pillar mining);

C.R.S. 34-33-123(13) (a) and (b), by adding language (1) that authorizes Colorado, when it determines that a permit has been improvidently issued, to implement remedial measures, including development of a cooperative plan with the permittee, imposition of a condition on the permit, or issuance of an order to the permittee to show cause why the permit should not be suspended or revoked; and, (2) that requires a show cause order to include the reasons for the finding that the permit was improvidently issued and to provide an opportunity for a public hearing;

C.R.S. 34-33-125 (4) and (8), concerning bond release, to require that Colorado (1) provide written notification to the permittee of its proposed decision within sixty days from the date of the required bond

release and evaluation, and (2) hold an informal conference to resolve written comments or objections on the request for bond release if the conference concludes by the sixtieth day following the required bond release inspection and evaluation;

C.R.S. 34-33-127 and 34-33-129 (a) and (b), concerning entities or operations which must comply with Colorado's act, to (1) include any publicly owned corporation of the Federal government, (2) exempt the extraction of coal by a landowner for his own use from land owned or leased by such landowner, and (3) delete the exemption from the act for extraction of coal that effects 2-acres or less;

C.R.S. 34-33-133(2)(a), concerning abandoned mine land reclamation, to provide full authority for Colorado to apply for money or other funds for the development, administration, and fulfillment of the requirements of an abandoned mine reclamation program; and

C.R.S. 34-33-133.5 (1) and (2), by adding language that authorizes MLRB to issue rules and regulations to develop a Colorado mine subsidence protection program, assess and expend fees collected from participants who are insured under the program, and expend interest earned on such fee as necessary to defray administrative costs of the program.

In addition, Colorado proposes editorial revisions throughout C.R.S. 34-33-104 through 126 to (1) replace the term "division" with the term "office" and (2) replace the terms "he" and "his" with gender neutral terms.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Denver Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the

person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., M.D.T., on September 25, 1996. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of 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 the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. 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)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that 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.

6. 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 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 3, 1996.
Richard J. Seibel,
*Regional Director, Western Regional
Coordinating Center.*
[FR Doc. 96-22967 Filed 9-9-96; 8:45 am]
BILLING CODE 4310-05-M

Bureau of Land Management

43 CFR Part 2560

RIN 1004-AC90

Alaska Occupancy and Use; Alaska Homestead Settlement

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule removes regulations on Alaska occupancy and use concerning homestead settlements. BLM takes this action because the Federal Government has closed homesteading in Alaska, making the current regulations obsolete.

EFFECTIVE DATE: This rule takes effect October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Frank Bruno, Regulatory Management Team, Bureau of Land Management, 202-452-0352

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background and Discussion of Final Rule
- III. Procedural Matters

I. Public Comment Procedures

The existing regulations which this rule would eliminate, 43 CFR subpart 2567, are obsolete and without purpose. The BLM has determined for good cause that notice and public procedure on this rule are unnecessary and contrary to the public interest, because the regulation that this rule removes contains only obsolete regulatory substance or guidance, as explained below.

II. Background and Discussion of Final Rule

43 CFR subpart 2567 has no substantive purpose. This subpart was written to implement the extension of homestead laws to Alaska by the Act of May 14, 1898 (30 Stat. 409, 43 U.S.C. 270). This Act was repealed by section 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701 *et seq.*, effective in 1986. At this time there are no pending homesteads in Alaska, nor will the Bureau open lands for homesteading in the future. In addition, no appeals from the granting or denying of homestead applications are presently pending. Therefore, 43 CFR subpart 2567 has no

continued legal relevance or other effect on the public at large.

III. Procedural Matters

National Environmental Policy Act

BLM has determined that because this final rule only eliminates provisions that have no impact on the public and no continued legal relevance, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Department Manual (DM), Chapter 2, Appendix 1, Item 1.10. In addition, the final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

The rule does not contain information collection requirements which the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Unfunded Mandates Reform Act

Removal of 43 CFR subpart 2567 will not result in any unfunded mandate to

state, local or tribal governments in the aggregate, or to the private sector, of \$100,000,000 or more in any one year.

Executive Order 12612

The final rule would not have sufficient federalism implications to warrant BLM preparation of a Federalism Assessment (FA).

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this final rule is Frank Bruno, Regulatory Management Team, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone 202/452-0352.

List of Subjects for 43 CFR Part 2560

Alaska, Homesteads, Indians—Lands, Public Lands—Sale, Reporting and Recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 2560, group 2500, subchapter B, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 2560—ALASKA OCCUPANCY AND USE

1. The authority citation for part 2560 is added to read as follows:

Authority: 43 U.S.C. 1201, 1740.

2. Part 2560 is amended by removing subpart 2567 in its entirety.

Dated: August 27, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96-22704 Filed 9-9-96; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Part 2610

[WO-350-1430-00-24 1A]

RIN 1004-AC80

Carey Act Grants

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to President Clinton's Government-wide regulatory reform initiative, the Bureau of Land Management proposes to remove the regulations concerning Carey Act Grants, because the provisions are obsolete. Since 1980 when regulations were issued, only one public land State has applied for a grant of desert lands under the Carey Act.

DATES: Submit comments by October 10, 1996. BLM may, but need not, consider comments received or postmarked after this date in preparing the final rule.

ADDRESSES: If you wish to comment, you may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You also may transmit comments electronically via the Internet to WOCComment@WO0033wp.wo.blm.gov. Please include "attn: RIN 1004-AC80" in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly. You will be able to review comments at BLM's Regulatory Management Team office, Room 401, 1620 L St., NW., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, Bureau of Land Management, Realty Use Group, at 202-452-7779.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Discussion of Proposed Rule
- III. Procedural Matters.

I. Public Comment Procedures

Written comments on the proposed rule should be specific, focus on issues pertinent to the proposed rule, and explain the reason for any

recommended change. Where possible, comments should reference the specific section or paragraph of the proposal being addressed. BLM may, but need not consider or include in the Administrative Record for the final rule comments received or postmarked after the close of the comment period (see **DATES**) or delivered to an address other than the one listed above (see **ADDRESSES**).

II. Discussion of Proposed Rule

Part 2610 of 43 CFR implements Section 4 of the Carey Act, 43 U.S.C. 641 *et seq.* The Act authorizes the Secretary of the Interior, through BLM State Directors, to grant and patent up to one million acres of desert lands to individual States and to grant and patent additional acreage to certain States, to aid these public land States in the reclamation of desert lands, and the settlement, cultivation, and sale of such lands, by small tracts, to actual settlers.

These regulations were issued in 1980 when several of the arid western States indicated a desire to use the provisions of the Act to encourage reclamation of lands that had potential for agricultural production. However, the conditions in the west are such that although some public lands are available with the capability for agricultural production, there is limited or no water that can be allocated for the large projects envisioned by the Act. As a result, to BLM's knowledge there has been only one application since 1980 for a Carey Act grant of desert lands.

III. Procedural Matters

National Environmental Policy Act of 1969

The BLM has prepared a draft environmental assessment (EA), and has made a tentative finding that the final rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM anticipates making a Finding of No Significant Impact (FONSI) for the final rule in accordance with the BLM's procedures under NEPA. The BLM has placed the EA on file in the BLM Administrative Record at the address specified previously. The BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts prior to promulgation of the final rule.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that

the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

BLM has determined that the proposed 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.*).

Unfunded Mandates Reform Act of 1995

Pursuant to the requirements of section 205 of the Unfunded Mandates Reform Act of 1995 (UMRA), BLM has selected the most cost-effective and least burdensome alternative that achieves the objectives of the rule. Removal of 43 CFR part 2610 will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of \$100,000,000 or more in any one year.

Executive Order 12612

The proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Author

The principal author of this rule is Jeff Holdren, Realty Use Group, (202) 452-7779, assisted by Frances Watson, Regulatory Management Team, (202) 452-5006.

List of Subjects in 43 CFR Part 2610

Homesteads, Intergovernmental relations, Irrigation, Public lands—grants, Reclamation.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, BLM proposes to remove part 2610 of group 2600, subchapter B, chapter II of title 43 of the Code of Federal Regulations.

Dated: August 27, 1996.
Sylvia V. Baca,
Deputy Assistant Secretary of the Interior.
[FR Doc. 96-22705 Filed 9-9-96; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Parts 6400 and 8350

RIN 1004-AC87

Wild and Scenic Rivers

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In response to President Clinton's Government-wide regulatory reform initiative, the Bureau of Land Management (BLM) proposes to write the regulation on wild and scenic rivers in a straightforward "Plain English" style. This regulation would establish uniform standards and procedures by which BLM will consider Federal licensing of, or assistance to, water resource projects on components affecting Wild and Scenic Rivers or Study Rivers administered by the Secretary of the Interior, through the Director, BLM. The regulation would harmonize BLM's procedures and definitions with those of the U.S. Forest Service to streamline and improve the administration of the Wild and Scenic Rivers System.

DATES: Submit comments by October 10, 1996. BLM may, but need not, consider comments received or postmarked after this date in preparing the final rule.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW, Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. Commenters may transmit comments electronically via the Internet to: WOCComment@WO0033wp.wo.blm.gov. [For Internet, please include "Attn: AC87", your name and address in your message.]

Comments will be available for public review at the L Street address during regular business hours, from 7:45 a.m. to

4:15 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary Marsh, Special Areas and Land Tenure Team, (202) 452-7795.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

Written comments on the proposed rule should be specific, focus on issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal being addressed. If comments are received or postmarked after the close of the comment period (see **DATES**) or delivered to an address other than the one listed above (See **ADDRESSES**), BLM will not necessarily consider or include them in the Administrative Record for the final rule.

II. Discussion of Proposed Rule

This proposed rule follows up an Advance Notice of Proposed Rulemaking that the BLM published in the June 5, 1996, Federal Register (61 FR 28546). That advance notice notified the public of the restructuring of 43 CFR Parts 6000-9000, and of BLM's plans to publish proposed rules for those parts in the near future. BLM now proposes to renumber and revise present Part 8350 of 43 CFR under the authority of Section 7 of the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1278). That Act directs Federal agencies to protect the free-flowing condition and other values of designated rivers and congressionally-authorized study rivers from the harmful effects of proposed water resources projects.

The proposed rule sets forth applicable procedures that the Director, BLM, uses in administering Federal assistance for proposed water resources projects affecting Wild and Scenic Rivers or Study Rivers. This regulation is consistent with that of the Forest Service, U.S. Department of Agriculture, at 36 CFR Part 297.

III. Procedural Matters

National Environmental Policy Act of 1969

The BLM has prepared a draft environmental assessment (EA), and has made a tentative finding that the final rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969

(NEPA), 42 U.S.C. 4332(2)(C). The BLM anticipates making a Finding of No Significant Impact (FONSI) for the final rule in accordance with the BLM's procedures under NEPA. The BLM has placed the EA on file in the BLM Administrative Record at the address specified previously. The BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts prior to promulgation of the final rule.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501 et seq.

The Regulatory Flexibility Act

BLM has determined that the proposed 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.)

Unfunded Mandates Reform Act of 1995

This proposed rule does not include any Federal mandate that may result in expenditures of \$100 million or more in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a Section 202 statement under the Unfunded Mandates Reform Act is not required.

Executive Order 12612

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

Executive Order 12630

BLM certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12866

The proposed rule does not meet the criteria for significant regulatory action requiring review by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review.

Executive Order 12988

The Department has determined that this rule meets the applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Author

The principal author of this rule is Frances Watson, Regulatory Management Team, (202) 452-5006.

List of Subjects

43 CFR Part 6400

National Wild and Scenic Rivers System.

43 CFR Part 8350

National Trails System, National Wild and Scenic Rivers System, Penalties, Public lands.

For the reasons discussed in the preamble and under the authority of 43 U.S.C. 1740, BLM proposes to amend chapter II of Title 43 of the Code of Federal Regulations as set forth below:

1. Part 8350 is removed.
2. A new part 6400 is added to read as follows:

PART 6400—WILD AND SCENIC RIVERS

Subpart A—Introduction

Sec.

6400.1 What is the purpose of part 6400?

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Authority: 16 U.S.C. 1271-1288.

Subpart A—Introduction

§ 6400.1 What is the purpose of part 6400?

Part 6400 specifies BLM policies and procedures for administering Federal assistance or licensing of water resources projects affecting Wild and Scenic Rivers or Study Rivers.

§ 6400.2 How are key terms in this part defined?

As used in part 6400:

Act means the Wild and Scenic Rivers Act (82 Stat. 906, as amended; 16 U.S.C. 1271-1288).

Construction means any action carried on with Federal assistance affecting the free-flowing characteristics or the outstandingly remarkable values of a Wild and Scenic River or Study River.

Federal assistance means any assistance by an authorizing agency before, during, or after construction. Such assistance may include, among other examples, a license, permit, preliminary permit, or other authorization granted by the Federal Energy Regulatory Commission (FERC) under sections 4 (e) and (f) of the Federal Power Act (16 U.S.C. 797); a license, permit or other authorization granted by the Corps of Engineer, Department of the Army, under the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.) and section 404 of the Clean Water Act (33 U.S.C. 1344); or any other license, permit, assistance, or authorization required by a Federal department or agency.

Free-flowing means existing or flowing in a natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway, as defined by section 16(b) of the Act (16 U.S.C. 1286(b)).

Study period means the time during which the BLM will study an eligible river as a potential component of the Wild and Scenic Rivers System. The study period may last up to 3 additional years for Congressional consideration of a report recommending designation, or such additional time as may be provided by statute.

Study river means a river and the adjacent area within one quarter mile on each side of the river from the ordinary high water mark (or other width as identified by the Congress), which is designated for study as a potential addition to the National Wild and Scenic Rivers System under section 5(a) of the Act.

Water resources project means any project under the Federal Power Act (41 Stat. 1063, 16 U.S.C. 791a) as amended, or other construction of developments which may affect the free-flowing characteristics of a Wild and Scenic River or Study River. Examples could include, among others, dams, water conduits, reservoirs, powerhouses, transmission lines, water diversion projects; dredge and fill operations, fisheries habitat and watershed restoration/enhancement projects; bridge and other roadway construction/reconstruction projects; bank stabilization projects; channelization projects; recreation facilities such as boat ramps and fishing piers; and activities such as suction dredging associated with mining.

Wild and scenic river means a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System.

Subpart B—Proposed Water Resources Projects

§ 6400.10 What procedures must a Federal department agency follow to receive consideration from BLM before providing assistance to, or authorization of, a water resources project?

(a) *Advance notice.* (1) Federal department and agencies must notify the Director, BLM, as soon as possible of their intention to issue a license, permit, or other authorization for a federally-assisted water resources project on any portion of a Wild and Scenic River or Study River administered by the BLM.

(2) Agencies must send advance notice at least 60 days before the date of the proposed action.

(3) Agencies should send the notice to the Director, Bureau of Land Management, 1620 L Street NW., WO-420, Mail stop 204LS, Washington, DC 20240-9998.

(b) *Contents of notice.* Include the following information in the notice:

(1) Name and location of affected river;

(2) Location of the project;

(3) Nature of the permit or other authorization proposed to be issued;

(4) Description of the proposed activity; and

(5) Any relevant information, such as plans, maps, environmental studies, assessments, or impact statements, alternatives, and mitigating measures.

§ 6400.111 Under what conditions will the Director approve Federal assistance to, or authorization of, a water resources project?

(a) The Director will approve Federal assistance to, or authorization of, a water resources project if he or she determines that:

(1) The water resources project will not have a direct and adverse effect on the values for which a Wild and Scenic River was designated or Study River was authorized, when any portion of the project is within the boundaries of such river; or

(2) The effects of the water resources project will neither invade nor unreasonably diminish the scenic, recreational, and fish and wildlife values of a Wild and Scenic River, when any portion of the project is located above, below, or outside the Wild and Scenic River; or

(3) The effects of the water resources project will neither invade nor diminish the scenic, recreational, and fish and wildlife values of Study River when the project is located above, below, or outside the Study River during the study periods; and

(4) The water resources project is in compliance with the National Environmental Policy Act (NEPA).

(b) If the proposed assistance or authorization fails to meet the above conditions, the Director will disapprove an authorization for a water resources project.

§ 6400.12 What is the time limit for the Director to approve Federal assistance to, or authorization of, a water resources project?

The Director must approve or disapprove an authorization for a water resources project within 60 calendar days of receiving the advance notice. The Director, to the extent possible, will expedite consideration of a notice of intent for a project it is needed to address an emergency.

Dated: August 27, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 96-22706 Filed 9-9-96; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96-095, Notice 01]

RIN 2127-AG50

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public workshop; request for comments.

SUMMARY: This document announces that NHTSA will be holding a public workshop to explore issues relating to improving child safety by establishing requirements for universal child restraint anchorage systems. The purpose of the workshop is to—

- Assess and discuss the relative merits, based on safety, cost, public acceptance and other factors, of various competing solutions to the problems associated with improving the compatibility between child restraint systems and vehicle seating positions and belt systems, increasing child restraint effectiveness, and increasing child restraint usage rates;

- Assess the prospects for the adoption in this country and elsewhere of a single regulatory solution or at least compatible regulatory solutions; and

- Promote the convergence of those solutions.

DATES: *Public workshop:* The public workshop will be held in Washington DC on October 9 and 10, 1996, from 9:00 a.m. to 5:00 p.m.

Those wishing to participate in the workshop should contact Dr. George Mouchahoir, at the address or telephone number listed below, by October 4, 1996.

Written comments: Written comments may be submitted to the agency and must be received by October 25, 1996.

ADDRESSES: *Public workshop:* The public workshop will be held in room 2230 of the Nassif Building, 400 Seventh St. SW, Washington DC 20590.

Written comments: All written comments must refer to the docket and notice number of this notice and be submitted (preferable 10 copies) to the Docket Section, National Highway Traffic Safety Administration (NHTSA), Room 5109, 400 Seventh St., S.W., Washington, D.C. 20590. Docket hours are from 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590 (telephone 202-366-4919).

SUPPLEMENTARY INFORMATION:

I. Safety Problem

A child restraint system that is properly installed in a motor vehicle and used correctly can reduce the chance of serious injury in a crash by 67 percent and fatal injury by an estimated 71 percent. However, the safety benefits of a child restraint system can be reduced considerably or even negated altogether when the child restraint is not properly installed and used. A four-state study done for the National Highway Traffic Safety Administration (NHTSA) in 1996 examined people who use child restraint systems and found that approximately 80 percent of the persons made at least one error in using the systems.¹ The rates of incorrect usage for specific components were 72 percent for the clip designed to lock the vehicle lap belt used to secure the child restraint system, 59 percent for the harness retainer chest clip, 46 percent for the harness strap, and 17 percent for the vehicle safety belt. The study did not address the potential risk of injury for each mode of incorrect usage.

A major source of difficulty in properly installing child restraints is incompatibility between child restraints and vehicle seating positions and safety

¹ A copy of this study will be placed in the docket prior to the public workshop.

belt systems. Incompatibility can occur as the result of:

- The seat belt anchorages being positioned too far forward of the seat bight.² Some vehicle manufacturers have moved the anchorages farther forward of the seat bight to improve the path of the lap belt across the lap of adults.
- The bottom cushion of some vehicle seats are too deeply contoured. As a result, there is no surface on the seats which can be used to mount a child restraint stably.
- The seat belt may not be long enough to permit it to be fastened around child restraints, or special child restraints. In addition, the seat belt hardware may not be suitable for use with these restraints. In these cases, the seat belt may not properly hold the child restraint.
- The vehicle seat is not wide enough or long enough to properly accommodate the child restraint.

II. Past Efforts to Develop Solutions

One of NHTSA's highest priorities is improving the proper installation and use of child restraints. NHTSA Administrator Ricardo Martinez, M.D. has appeared on national television to make the public more aware of the need for increasing the correct use of child restraints. The agency has also worked with newspapers, magazines and other journals across the country to alert the public to the causes and consequences of incorrect use. In February 1995, Administrator Martinez announced the formation of a "Blue Ribbon Panel" of experts to recommend ways that child restraints can be made easier to install and use. Panel members included child safety advocates and representatives of the motor vehicle, child safety seat and seat belt industries. Both domestic and foreign manufacturers were represented.

On April 2, 1995, NHTSA held a public meeting to obtain public comment on the causes of incorrect child restraint use and incompatibility with motor vehicles. Among other things, participants provided information about compatibility problems between vehicle seat and belt assemblies and child restraints. NHTSA expressed concern that child restraints and the vehicles in which they are used are not always readily compatible, thereby making it difficult for parents to install and use the restraint systems to ensure that their child receives the best protection.

On May 30, 1995, the "Blue Ribbon Panel on Child Restraint and Vehicle

Compatibility" issued its report recommending ways to improve the correct and convenient use of child restraints and to seek solutions to improve the compatibility between child restraints and vehicle seating positions. The panel addressed child restraint compatibility issues in three time frames—(1) existing products currently being used by consumers, (2) products currently for sale in the marketplace or available in the near future, and (3) new technologies for future products.

With respect to long term solutions, the Blue Ribbon Panel recommended an entirely new and separate anchorage system for child restraint installation, given the complex variables affecting the proper installation of child restraints using existing vehicle safety belts. The panel noted that the International Standards Organization (ISO), Technical Committee 22, Subcommittee 12, Working Group 1, Child Restraint Systems, was developing a system known as ISOFIX that uses four rigid uniform attachment points for child restraints and vehicle seating positions. The panel further recommended that

NHTSA should expeditiously complete a comprehensive evaluation of ISOFIX, including appropriate crash modes and child comfort issues, and should initiate rulemaking that, if NHTSA's evaluation is found acceptable, will permit ISOFIX or a uniform attachment points system that is functionally compatible with ISOFIX under Federal Motor Vehicle Safety Standard 213.

In the Fall of 1995, NHTSA initiated a research program to support rulemaking about a universal³ child restraint anchorage system such as the ISOFIX. The research program consisted of five major elements:

- Evaluation of safety performance issues,
- Assessment of benefits,
- A tear down cost study,
- Evaluation of consumer acceptance, and
- Harmonization and cooperative work over the development of a universal system.

On January 23, 1996, the Blue Ribbon Panel met to discuss ISOFIX and other universal attachment systems. At this meeting, most of the domestic child restraint manufacturers and most of the domestic and foreign vehicle and safety belt manufacturers that were present stated their opposition to ISOFIX without further evaluation of that

system and other universal attachment systems. The panel as a whole expressed concern that ISOFIX might be too rigid, too susceptible to false latching, unreasonably expensive, and too heavy.

To encourage NHTSA to evaluate other universal anchorage systems in addition to ISOFIX, the Blue Ribbon Panel adopted two statements to clarify its initial recommendation:

★ At this time, the panel does not endorse ISOFIX as the singular uniform attachment points system for future use in the United States. However, the panel continues to strongly endorse uniform attachment points for child restraints.

★ Other child restraint anchorage concepts, in addition to ISOFIX, should be evaluated by interested parties (e.g., child restraint and vehicle manufacturers, regulators, etc.) prior to initiating regulatory proposals or requiring any specific design concept.

In June 1996, the Blue Ribbon Panel issued a report titled a "Progress Report on 1995 Recommendations." That report stated that NHTSA had conducted tests of ISOFIX child restraint systems and will continue to conduct testing. The tests included dynamic sled tests using rear-facing and forward-facing child restraints on a Standard No. 213 test fixture fitted with matching rigid attachment points hardware, as specified by ISO.

In the same month, NHTSA completed its ISOFIX research program. It is now in the process of documenting the findings of this program. As part of this program, the agency has conducted a tear down cost analysis of alternative universal child restraint anchorage systems. The agency has also conducted sled testing of the ISOFIX at its Vehicle Research Test Center. The agency anticipates that the cost analysis and the sled testing results will be available at the public workshop. The agency will put in the docket an analysis entitled, "Target Population Assessment, Clinic and Test Results for Universal Attachment Points for Child Restraints," which provides much of the data collected by the agency on this issue and some analyses of those data.

III. Solutions Currently Under Consideration

This section briefly describes the ISOFIX four-point rigid system. It then discusses other anchorage systems that were developed by interested parties, including ISO, the governments of other countries, and vehicle and child restraint manufacturers, as alternatives to ISOFIX in response to the problems associated with that system.

²The intersection of the vehicle seat back and its seat cushion.

³In today's notice, NHTSA refers to these anchorages as "universal child restraint anchorage systems." This term should not be confused with the term, "uniform child restraint anchorage systems," used by GM and the other manufacturers in their petition for rulemaking.

A. ISOFIX Four-Point Rigid System

The ISOFIX four-point rigid attachment system consists of two rear anchorage points hidden in the area where the vehicle seat cushion and seat back intersect. These anchorages are specified by the ISO Working Group as short steel bars with a diameter of 6 mm. A four-point system presents certain advantages over a two-point system (discussed below). Its greater number of attachment points provides a degree of fail-safe backup protection. Further, it provides firm anchorage independent of a vehicle's seat cushion and lap belt, thus eliminating use problems associated with those vehicle components.

B. CANFIX Two-Point Rigid System Plus Tether

Transport Canada has developed the CANFIX system which consists of two rigid rear attachments like ISOFIX at the bight of the seat plus an upper tether. This system requires all vehicles to be equipped with upper tether anchorage locations. Transport Canada developed the CANFIX as an alternative to the four-point ISOFIX based on its interest in a tether as a third attachment point and on its concerns about the acceptability to vehicle manufacturers of the front attachment points on vehicle seats.

CANFIX is supported by Australia which refers to the system as CAUSFIX. Australia selected CAUSFIX after testing CAUSFIX, the four-point ISOFIX, and current systems. CAUSFIX was preferred because it was thought to provide the best potential for side impact protection and because upper tethers have strong support in Australia. As of July 1996, Australia had not tested a system like that described in the next section, i.e., a two-point soft system plus tether.

C. US and Japanese Industry Petition For Two-Point Soft System Plus Tether

On June 28, 1996, NHTSA received a petition for rulemaking from the American Automobile Manufacturers Association (AAMA) which includes General Motors, Chrysler, and Ford; certain members (Honda, Isuzu, Nissan, Subaru, and Toyota) of the Association of International Automobile Manufacturers (AIAM); and the Juvenile Products Manufacturer's Association (JPMA) which includes Century, Evenflo, Fisher-Price, Gerry, Kolcraft, and Indiana Mills and Manufacturing.⁴

⁴Today's notice refers to this petition as the "joint U.S./Japanese industry petition."

In the joint U.S./Japanese industry petition, the petitioners requested that the agency conduct a rulemaking proceeding to require vehicle manufacturers to provide uniform child restraint anchorages (UCRA) for add-on child restraint systems at (1) the two outermost, forward-facing second row positions, and (2) at least one front position in vehicles that either lack second row seats or have second row seats incapable of accommodating a rear facing infant seat and that have a switch for deactivating the front passenger air bag. In addition, a top tether anchorage would be required at each rear seating position.

A child restraint placed in the rear center seating position would be secured at the top by the top tether and at the bottom by the current center lap belt. The petitioners also requested that child restraint manufacturers be required to provide new child restraint system designs compatible with both (1) the petitioners' requested UCRA system (used alone), and (2) existing vehicle seat belt systems (used alone).

To achieve these ends, the joint U.S./Japanese industry petitioners recommended a UCRA system that consists of two lower anchorages near the bight line and an upper tether anchorage. The lower anchorages would utilize a standard non-proprietary "anchorage latch plate" geometry compatible with a small, easy-to-use buckle as well as existing tether hooks, and the upper tether anchorage would be compatible with tether hooks.

The joint U.S./Japanese industry petitioners believed that the combination of three specific factory installed anchorages at two designated seating positions, along with compatible child restraint systems would: (1) provide additional protection for add-on child restraint system occupants when compared to child restraint systems secured with existing vehicle belts, and (2) promote higher child restraint use rates by enhancing the confidence of the person installing a child restraint system that the system is securely fastened.

D. European Industry Hybrid System

As a refinement of the ISOFIX four-point rigid system, several European ISO manufacturer members are currently developing a hybrid system. The system consists of two lower attachment points located in the seat bight and an upper attachment point located behind the vehicle seat back. A child restraint system could be attached to the two lower attachment points by means of either a buckle or the ISOFIX

connector. The object of this option is to achieve worldwide compatibility between the UCRA and ISOFIX types of connectors. The upper anchorage for the tether anchorage on the vehicle and the tether hook on the child restraint would be optional depending on national regulations. The specification of the tether on the child restraint and anchorage on the vehicle are the same as the UCRA system.

E. Cosco Petition For Additional Vehicle Lap Belt

On July 1, 1996, COSCO submitted a petition for rulemaking. COSCO acknowledged that both rigid and soft systems are technically feasible and produce good results in simulated crashes. However, it expressed concern that the adoption of any universal anchorage systems would significantly increase the average retail price of a convertible child restraint system from 40 percent to 300 percent. The petitioner believed that such a price increase would severely limit the availability and use of child restraint systems. COSCO further stated that child restraints secured with universal anchorage systems perform only marginally better in dynamic tests compared to current child restraint systems. The petitioner noted also that most consumers would not realize benefits from these improvements until a majority of vehicles were equipped with a universal attachment.

Based on these concerns, COSCO recommended that vehicle manufacturers be required to install a separate lap belt at or near of the bight of the rear center position and one rear outboard position in each vehicle having a second row of seats, and at least one in the front seat of vehicles lacking a rear seat. It believed such a requirement would be more cost effective, simpler and more quickly implemented. COSCO further requested that vehicle manufacturers be required to install a tether anchorage at each designated seating position equipped with the anticipated UCRA.

F. Summary of Solutions

The following table compares the various competing solutions to the problem of providing universal child restraint anchorages based on several attributes, including effectiveness, relative cost, and weight. The table also identifies notable advantages of each solution.

UNIVERSAL CHILD RESTRAINT ANCHORAGE SYSTEMS

	ISOFIX 4-point rigid	CANFIX 2-point rigid & tether	UCRA 2-point soft & tether	HYBRID 2-point rigid/soft lower & tether	COSCO lap belt
Effectiveness—Crash Tests	High	High	High	Assumed to be similar to CANFIX & UCRA.	Assumed to be as good as or better than existing vehicle safety belts.
Incremental Child Restraint Cost Increase to Consumers ⁵ .	\$90–100	\$50–\$60	\$20	\$20 or \$50–60	None.
Incremental Vehicle Cost Increase to Consumers.	\$9	\$8	\$12	Unknown	\$10.
Incremental Child Restraint Weight Increase ⁶ .	5 to 8 pounds	3 to 5 pounds	4 to 5 pounds	3 to 5	None.
Other Advantages	Firm anchorage independent of vehicle seat/belt.	Tether provides added protection.	Familiar belt hardware.	Versatile & harmonization.	Simplicity & familiar belt hardware.

G. Consumer Surveys

Various surveys have been conducted to determine consumer acceptance and preference of alternative ISOFIX-type child restraint systems. User trials in Sweden, Germany and the United Kingdom found that the largest majority of parents preferred the four-point rigid ISOFIX system compared to current child restraint systems. The trials also found that the majority of parents correctly fitted the ISOFIX. In contrast, less than half of the parents surveyed correctly fitted the current child restraint systems. It should be noted that these user trials did not include the UCRA system which the joint U.S./Japanese industry petitioners have asked the agency to adopt. At the time of those trials, the UCRA system was not available.

In early 1996, General Motors and other manufacturers conducted two consumer clinics, one in the U.S. and a second in Japan. The surveys sought to determine consumer preference on alternative universal child restraint anchorage systems, including the four-point ISOFIX and variations of the UCRA system. As stated in the joint U.S./Japanese industry petition, the results of the clinics indicate that most participants preferred the UCRA system over the current child restraints and ISOFIX systems.

An ad hoc group of the ISO Working Group on child restraint systems is currently gathering information on the performance, cost, and public acceptance of the ISOFIX, CANFIX, UCRA and the Hybrid system.

Currently, the Insurance Corporation of British Columbia in Canada is

⁵ These costs are in addition to the costs associated with existing child restraints. Child restraints currently cost between \$40 and \$80.

⁶ Child restraints currently weigh 10 to 15 pounds.

sponsoring independent user trials to determine consumer preference regarding alternative universal child restraint anchorage systems. The trials will cover all options being considered by ISO, including the Hybrid system, if available.

IV. Public Workshop

A. Purposes

In an effort to narrow the array of competing solutions, NHTSA is holding a public workshop. The agency is holding a workshop instead of its typical, legislative type public meeting in order to facilitate the interactive exchange and development of ideas among the attending interested parties. NHTSA expects that those parties will include consumer and safety advocacy groups as well as vehicle and child restraint system manufacturers.

The specific purposes of the workshop are to—

- *Compare solutions.* Assess and discuss the relative merits, based on safety, cost, public acceptance and other factors, of various competing solutions to the problems associated with improving the compatibility between child restraint systems and vehicle seating positions and belt systems, increasing child restraint effectiveness, and increasing child restraint usage rates;

- *Assess prospects for single or compatible solutions.* Assess the prospects for the adoption in this country and elsewhere of a single regulatory solution or at least compatible regulatory solutions; and
- *Promote convergence.* Promote the convergence of those solutions.

NHTSA notes that in selecting the best solution, tradeoffs may have to be made among the various criteria in the matrix. For instance, the solution that performs best in safety tests might not

be the solution with the highest level of consumer acceptance. If so, the solution that performs best in safety tests may not be the solution that offers, as a practical matter, the most safety benefits. The agency will examine the need to make such tradeoffs in developing its proposal.

NHTSA plans to rely on the information presented at the workshop to assist in developing a notice of proposed rulemaking (NPRM) that would propose requiring a universal child restraint anchorage system. The agency believes that any proposal to require a universal child restraint anchorage system should advance the following goals:

- Improve the compatibility between child restraint systems and vehicle seats and belt systems, thereby decreasing the potential that a child restraint is improperly installed;
- Ensure an adequate level of protection during crashes;
- Ensure correct child restraint system use by ensuring that the child restraint systems are convenient to install and use;
- Ensure that the child restraint systems and anchorages are cost effective; and
- Achieve international compatibility of child restraint performance requirements for uniform attachment points.

B. Procedural matters

October 9; morning. The morning of the first day will be devoted primarily to technical presentations. The rationale for each of the five solutions will be discussed by a representative or representatives of the parties which developed that solution. Those presentations should include, if possible, prototypes and other visual displays. Then there will be technical

presentations by a representative or representatives of the experts who conducted the consumer acceptance studies mentioned in this document. The agency will contact the parties responsible for the alternative solutions and consumer acceptance studies to arrange these presentations.

Finally, procedures for encouraging an exchange of ideas during the interactive phase of the workshop will be discussed.

October 9; afternoon. The afternoon of the first day will be devoted to an interactive discussion among interested persons. Those persons interested in actively participating in this phase of the workshop should contact Dr. Mouchahoir not later than October 4. The agency will make available an agenda setting forth the sequence of issues to be discussed during the interactive phase. Persons wishing to make closing remarks on the afternoon of October 10 should contact Dr. Mouchahoir not later than the end of the session on October 9.

October 10; morning and beginning of afternoon. The interactive phase will continue.

October 10; latter part of afternoon. Beginning about mid-afternoon, any participant who wishes to do so may make closing remarks for a period not to exceed 10 minutes. If time permits, persons who have not requested time, but would like to make remarks, will be afforded the opportunity to do so.

To facilitate communication, NHTSA will provide auxiliary aids (e.g., sign-

language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the workshop. Any person desiring assistance of auxiliary aids should contact Ms. Bernadette Millings, NHTSA Office of Crashworthiness Standards, telephone (202) 366-1740, no later than 10 days before the workshop. For any presentation that will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the workshop so that NHTSA can readily include the material in the public record.

NHTSA will place a copy of any written statement in the docket for this notice. In addition, the agency will make a verbatim record of the public workshop and place a copy in the docket.

Participation in the workshop is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A

request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket.

NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Those desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: September 4, 1996.

L. Robert Shelton,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96-23071 Filed 9-9-96; 8:45 am]

BILLING CODE 4910-59-P

Notices

Federal Register

Vol. 61, No. 176

Tuesday, September 10, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV96-911-5 NC]

Proposed Information Collection; Comment Request

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Limes Grown in Florida, Marketing Order No. 911, and Avocados Grown in South Florida, Marketing Order No. 915.

DATES: Comments on this notice must be received by November 12, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522-S, Washington, DC 20090-6456; telephone: 202-720-5127; or Aleck J. Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299-4770, Fax (941) 299-5169.

SUPPLEMENTARY INFORMATION:

Limes Grown in Florida

Title: Limes Grown in Florida, Marketing Order No. 911.

OMB Number: 0581-0091.

Expiration Date of Approval: January 31, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Avocados Grown in South Florida

Title: Avocados Grown in South Florida, Marketing Order No. 915.

OMB Number: 0581-0078.

Expiration Date of Approval: September 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. The marketing orders' regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601-674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the marketing order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Florida lime and avocado marketing order programs, which have been operating since 1955 and 1954, respectively.

The lime order authorizes the issuance of grade, size, quality, container, pack, and flow-to-market regulations. The avocado order authorizes the issuance of grade, size, quality, maturity, container, and pack regulations. Both orders authorize production research, and market research and development. Regulatory provisions apply to limes and avocados shipped both within and out of the production area to any market, except those specifically exempt.

The orders, and rules and regulations issued thereunder, authorize the Florida Lime Administrative Committee and the Avocado Administrative Committee as the agencies responsible for local administration of the orders. The orders require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committees have developed forms as a means for persons to file required information with the committees relating to lime and avocado supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and the marketing order programs. Florida limes and avocados are shipped throughout the year, and these forms are utilized accordingly. A Department form is used to allow producers to vote on amendments to or continuance of the marketing orders. In addition, lime and avocado producers and handlers who are nominated by their peers to serve as representatives on the committees must file nomination forms with the Secretary.

Formal rulemaking amendments to the orders must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the orders. Such referenda ballots are included in this request.

These forms require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the Act as expressed in the orders.

The information collected is used only by authorized representatives of the Department, including AMS, Fruit and Vegetable Division regional and headquarters staff, and authorized employees of the respective committees. AMS is the primary user of the information and authorized committee employees are the secondary users.

Limes Grown in Florida

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.13 hours per response.

Respondents: Lime producers and for-profit businesses handling fresh limes produced in Florida.

Estimated Number of Respondents: 55.

Estimated Number of Responses per Respondent: 14.1.

Estimated Total Annual Burden on Respondents: 101 hours.

Avocados Grown in South Florida

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.11 hours per response.

Respondents: Avocado producers and for-profit businesses handling fresh avocados produced in Florida.

Estimated Number of Respondents: 208.

Estimated Number of Responses per Respondent: 4.48.

Estimated Total Annual Burden on Respondents: 103 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the marketing orders and the Department's oversight of those programs, including whether the information will have practical utility; (b) the accuracy of the AMS'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 the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

Comments should reference either or both the OMB No. 0581-0091 (the Florida Lime Marketing Order No. 911), and OMB No. 0581-0078 (the Florida Avocado Marketing Order No. 915), and be sent to USDA in the care of Caroline C. Thorpe or Aleck J. Jonas at the addresses above.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 3, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-23017 Filed 9-9-96; 8:45 am]

BILLING CODE 3410-02-P

[No. LS-96-008]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) request for comments from the livestock and meat industry to improve or change the procedures for collecting information used to compile and generate new and expand existing livestock and meat reports to assist the

trade in making production and marketing decisions.

DATES: Comments must be submitted on or before November 12, 1996.

ADDRESSES: Jimmy A. Beard; Assistant to the Chief; Livestock and Grain Market News Branch, Livestock and Seed Division, AMS-USDA, Room 2623 South Building, P.O. Box 96456, Washington, D.C. 20090-6456.

FOR FURTHER INFORMATION CONTACT: Jimmy A. Beard, (202) 720-1050.

SUPPLEMENTARY INFORMATION:

Title: Livestock and Meat Market News.

OMB Number: 0581-0154.

Expiration Date of Approval: 11-30-96.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: Collection and dissemination of information for livestock, meat, and meat production facilities trading by providing a price base used by packers, wholesalers, and retailers to market products.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The livestock and market news reports are used by academia, but are primarily used by the livestock and meat trade, which includes packers, processors, brokers, retailers, and producers. The livestock and meat industry requested that the Department of Agriculture issue livestock and meat trade market reports for livestock, beef carcasses, boxed beef cuts, pork cuts, calf, lamb, and meat byproducts in order to assist them in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel.

Many government agencies use the reports to make their market outlook projections. Data from these reports is included in the information forwarded to the Secretary's Office as well as his staff to keep them apprised of the current market conditions and movement of livestock and meat in the United States. Economists at most major agricultural colleges and universities use the reports to make both short and long term market productions. The data is used extensively by consulting firms and private economists to aid them in

determining available supplies and current pricing.

The industry could not collect the information themselves as they would not want to divulge their information to competitors, and exchange of such information between competitors would violate antitrust laws. Consequently, the information must be collected, compiled, and disseminated by an impartial third party, in a manner which protects the confidentiality of the reporter. Also, since the Government is a large purchaser of meat, a system to monitor the collection and reporting of data is needed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .03 hours per response.

Respondents: Livestock and meat industry, or other for profit businesses, individuals or households, farms, or Federal Government.

Estimated Number of Respondents: 450.

Estimated Number of Responses per Respondent: 520.

Estimated Total Annual Burden on Respondents: 7,020 hours.

Copies of this information collection can be obtained from Jimmy A. Beard, Livestock and Grain Market News Branch, at (202) 720-1050.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Jimmy A. Beard, Assistant to the Chief, Livestock and Grain Market News Branch, Livestock and Seed Division, AMS-USDA, Room 2623 South Building, P.O. Box 96456, Washington, D.C. 20090-6456.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record, and will be made available at the address above, during regular business hours.

Dated: September 3, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96-23018 Filed 9-9-96; 8:45 am]

BILLING CODE 3410-02-M

[Docket No. FV-96-303]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the U.S. Standards for Grades of Fresh and Processed Fruits and Vegetables.

DATES: Comments on this notice must be received by November 12, 1996, to be assured of consideration.

ADDITIONAL INFORMATION: Contact Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, D.C. 20090-6456, (202) 720-2185.

SUPPLEMENTARY INFORMATION:

Title: U.S. Standards for Grades of Fresh and Processed Fruits and Vegetables.

OMB Number: 0581-0166.

Expiration Date of Approval: December 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The U.S. Standards for Grades of Fresh and Processed Fruits and Vegetables provide a common trading language to growers, packers/shippers, processors, wholesalers, retailers, and other financially interested parties which will promote a better product and create more uniformity throughout the industry.

The Agricultural Marketing Act of 1946 (60 Stat. 1087-1091, as amended; 7 U.S.C. 1621-1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services which facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs.

The AMA also directs and authorizes the Secretary of Agriculture to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices. There is a total of 314 U.S. Standards for Grades of Fresh and Processed Fruits, Vegetables, and Other Miscellaneous Products.

The information and collection process is used by the Fruit and Vegetable Division prior to developing a proposal, which is a formal version of

a new or revised standard. This gives the Division the opportunity to gather and discuss information from all parts of the industry and other interested parties as to the likely impacts of the suggested changes or additions to the standard. If this process was not possible, the USDA would incur additional costs by rewriting and modifying the standards, or even worse, develop a standard that would be of no use.

The information and collection requirements in this request are necessary to carry out the intent of the AMA, to provide the respondents the type of service they request, and to create and revise U.S. Standards for Fresh and Processed Fruits and Vegetables that are consistent with current cultural and marketing practices.

The information collected is used only by authorized representatives of the USDA (AMS, Fruit and Vegetable Division's national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies). The information is used to administer and to conduct and carry out the grading services requested by the respondents and for the purpose of developing and maintaining U.S. grade standards. The Agency is the primary user of the information, and the secondary user is each authorized State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one hour per response.

Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 930.

Estimated Number of Responses per Respondent: one.

Estimated Total Annual Burden on Respondents: 930 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the function of the Fresh and Processed Fruit and Vegetable industries in regard to uniform trading language and USDA's oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and, (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581-0166 and be sent to USDA in care of Frank O'Sullivan at the address above. All comments received will be available for public inspection during regular business hours at the same 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.

Dated: September 4, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96-23019 Filed 9-9-96; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92-463, as amended by Public Law 94-409), we are giving notice of a meeting of the 2000 Census Advisory Committee. The meeting will be held on Thursday, September 26, 1996, from 8:30 a.m.-5:00 p.m., at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC 20037.

The Advisory Committee is composed of a Chair, Vice Chair, and up to thirty-five member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of Census 2000 and user needs for information provided by that census, and provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the 2000 census of population and housing, and shall make recommendations for improving that census.

DATES: On Thursday, September 26, 1996, the meeting will begin at 8:30 a.m. and adjourn at 5:00 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Anyone wishing additional information about this meeting, or who wishes to

submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Office Building 3, Washington, D.C. 10133, telephone: 301-457-2308.

SUPPLEMENTARY INFORMATION: A brief period will be set aside for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301-457-2308.

Dated: August 30, 1996.

Everett M. Ehrlich,

*Under Secretary for Economic Affairs,
Economics and Statistics Administration.*

[FR Doc. 96-23023 Filed 9-9-96; 8:45 am]

BILLING CODE 3510-BP-M

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Information Systems Technical Advisory Committee (ISTAC) will be held October 2 & 3, 1996, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M-2, 14th Street between Pennsylvania Avenue and Constitution Avenue, N.W., Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 10, 1995, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(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 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, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482-2583.

Dated: September 4, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96-22965 Filed 9-9-96; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration (NOAA)

Small Business Innovation Research (SBIR)

AGENCY: Office of Research and Technology Applications, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Proposals are sought from high tech small businesses to respond to agency research needs in ocean science. The "Small Business Research and Development Enhancement Act of 1992" requires the Department of Commerce (DOC), to establish a three-phase SBIR program by reserving a percentage of its extramural R&D budget to be awarded to small business concerns for innovation research. DOC has the unilateral right to select SBIR research topics and awardees, and to award several or no grants under a given topic. Phase 1 is to determine the technical feasibility of ideas submitted for consideration and the quality of performance of the small business concern receiving an award. Therefore, the proposal should concentrate on research that will significantly contribute to proving the feasibility of the approach, a prerequisite to further support in Phase 2. Only firms that are awarded Phase 1 contracts or grants under this solicitation will be given the opportunity of submitting a Phase 2 proposal immediately following completion of Phase 1. Phase 2 is the R&D or prototype development phase. It will require a comprehensive proposal, outlining the effort in detail. Further information regarding Phase 2 proposal requirements will be provided to all firms receiving Phase 1 grants. In Phase 3, it is intended that non-SBIR capital be

used by small business to pursue commercial applications of Phase 2.

DATES: Strict deadlines for submission to the FY 1997 program are: Opening Date: October 1, 1996, Closing Date: January 15, 1997. Awards will be announced in July 1997.

ADDRESSES: Proposals are to be submitted to: U.S. Department of Commerce, NOAA, Procurement Operations Branch, Code OA313, 1325 East-West Highway, SSMC2, Station 4301 Silver Spring, Maryland 20910, ATTN: SBIR Proposals, Telephone: (301) 713-0829.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Bishop, Telephone: (301) 713-3565, Fax: (301) 713-4100.

SUPPLEMENTARY INFORMATION:

Funding Availability

Because of ongoing debates concerning the Federal budget, it is uncertain how much money will be available through this announcement. Funding levels will depend on final FY 1997 budget appropriations. During FY 1996, total funding was \$600,000. This included 4 Phase 1 awards of \$50,000, and 2 Phase 2 awards of \$200,000.

Program Authority

Authority: The Small Business Research and Development Enhancement Act of 1992, P.L. 102-564

(CFDA NO. 11.476)—Small Business Innovation Research

Program Objectives

SBIR invites small businesses to submit research proposals on ocean science topics described in the annual solicitation. Objectives of this solicitation include stimulating technological innovation in the private sector, strengthening the rule of small business in meeting Federal research and development needs, increasing the commercial application of innovations derived from Federal research, and improving the return on investment from Federally-funded research for the economic benefit of the Nation.

Program Priorities

In FY 1997, SBIR will give priority attention to individual proposals in the areas listed below.

- Underwater Visual Imaging System
- Aquaculture: Water Reuses and Effluent Treatment Systems
- Aquaculture: Developing and Improving Marine Species Culture
- Molecular and Immunological Probes
- Mapping Sonar for Small Underwater Vehicles
- Electronic Still Camera for Small Underwater Vehicles

- Sampling and Remediation of Contaminated Sediments
 - Recreational Boat Charting
- Matching Requirements:* None.
Type of Funding Instrument: Grant.

Eligibility

For-profit small businesses of less than 500 people, including affiliates, at least 51% owned by U.S. citizens or permanent resident aliens. All work must be done in the United States. The principal investigator must be employed full-time with the small business.

Award Period: For Phase 1, 6 months; for Phase 2, 24 months.

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit: See "For further Information Contact" section for where to obtain a copy of the solicitation, which contains forms and complete details.

Project Funding Priorities: None.

Evaluation Criteria: Phase 1 proposals will be rated by DOC scientists or engineers with equal consideration given to the following criteria, except for item (a), which will receive twice the value of any of the other items:

(a) The scientific and technical merit of the Phase 1 research plan and its relevance to the objectives, with special emphasis on its innovativeness and originality.

(b) Importance of the problem or opportunity and anticipated benefits of the proposed research to DOC, and the commercial potential, if successful.

(c) How well do the research objectives, if achieved, establish the feasibility of the proposed concept and justify a Phase 2 effort?

(d) Qualifications of the principal investigator(s), other key staff, and consultants, and the probable adequacy of available or obtainable instrumentation and facilities.

Selection Procedures: After review by technical specialists, a selection committee will choose proposals for award based on funds available and agency needs.

Other Requirements:

(1) *Federal Policies and Procedures*—Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

(2) *Past Performance*—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(3) *Preaward Activities*—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

(4) *No Obligation for Future Funding*—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(5) *Delinquent Federal Debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

- The delinquent account is paid in full,
- A negotiated repayment schedule is established and at least one payment is received, or
- Other arrangements satisfactory to DOC are made.

(6) *Name Check Review*—All for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honestly or financial integrity.

(7) *Primary Applicant Certifications*—All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

- Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;
- Drug-Free Workplace*—Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

iii. *Anti-lobbying*—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applied to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000, and loans and loan guarantees for more than \$150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. *Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

(8) *Lower Tier Certifications*—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(9) *False Statements*—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 28 U.S.C. 1001.

Intergovernmental Reviews: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Purchase of American-Made Equipment and Products: When purchasing either equipment or a product with funds provided through the grant, purchase only American-made equipment and products, to the extent possible in keeping with the overall research needs of the project.

Kurt J. Schnebele,

Executive Director of the Office of Oceanic and Atmospheric Research.

[FR Doc. 96-22971 Filed 9-9-96; 8:45 am]

BILLING CODE 3510-08-M

U.S. COMMISSION ON IMMIGRATION REFORM

Public Hearing on the Effects of Immigration in the Washington, DC, Metropolitan Area

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Announcement of Commission Public Hearing.

This notice announces a public hearing to be held by the U.S. Commission on Immigration Reform in Arlington, Virginia on September 17, 1996. The Commission, created by Section 141 of the Immigration Act of 1990, is mandated to review the implementation and impact of U.S. immigration policy and report its findings to Congress. Interim reports, U.S. Immigration Policy: Restoring Credibility, and U.S. Immigration Policy: Setting Priorities, were issued on September 30, 1994 and August 25, 1995 respectively; the Commission's final report is due at the end of fiscal 1997.

The public hearing participants will include the Commissioners, researchers, government officials, representatives of local organizations, and other experts. The public hearing will focus on the impact, adaption and integration of immigrants in the metropolitan Washington community. Participants are asked to make recommendations to the Commission on how to improve the impacts and integration of immigrants and how any negative impacts may be mitigated.

Tuesday, September 17, 1996

9:00 a.m.–12:30 p.m.—Public Hearing on the Effects of Immigration in the Washington, DC, Metropolitan Area, Arlington County Board Office, Room 300, Courthouse Plaza Number 1, 2100 Clarendon Boulevard, Arlington, Virginia

FOR FURTHER INFORMATION CONTACT: Paul Donnelly (202) 776-8642.

Dated: September 3, 1996.

Susan Martin,

Executive Director.

[FR Doc. 96-22993 Filed 9-9-96; 8:45 am]

BILLING CODE 6820-97-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 Bahrain

September 4, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. 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); Uruguay Round Agreements Act.

The current limits for Group I and Categories 338/339 are being increased for carryover.

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 62398, 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

September 4, 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 of CITA. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Bahrain and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 9, 1996, you are directed to increase 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	Twelve-month limit ¹
Group I 237, 239, 330-336, 338, 339, 340- 342, 345, 347, 348-354, 359, 431-436, 438- 440, 442-448, 459, 630-636, 638, 639, 640- 647, 648, 649, 650-654, 659, 831-836, 838, 839, 840, 842- 847, 850-852, 858, and 859, as a group.	40,791,251 square meters equivalent.
Sublevel in Group I 338/339	565,856 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.96-23025 Filed 9-09-96; 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 Nepal

September 4, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the

Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. 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 current limit for Categories 336/636 is being increased by application of swing, reducing the limit for Category 341 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62410, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the 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
September 4, 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 of CITA. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 9, 1996, you are directed to adjust the limits for the following categories, as provided for in the agreement dated December 2, 1993 and July 22, 1994, as amended and extended, between the Governments of the United States and the Kingdom of Nepal:

Category	Twelve-month limit ¹
336/636	233,638 dozen.
341	832,587 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. 96-23024 Filed 9-9-96; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF ENERGY

Draft Hanford Remedial Action; Environmental Impact Statement and Comprehensive Land-Use Plan, Richland, WA

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of availability (NOA).

SUMMARY: DOE announces the availability of the Draft Hanford Remedial Action Environmental Impact Statement and Comprehensive Land-Use Plan (HRA-EIS). The Draft EIS addresses DOE's proposed alternatives for establishing future land-use objectives for the Hanford Site. Decisions resulting from the assessment of the environmental impacts associated with these alternatives, in consultation with stakeholders and regulators, will establish a desired future land use for a given area. The scope of the HRA-EIS is based on the Hanford Future Site Uses Working Group (Working Group) recommendations which were developed by stakeholders representing a diverse combination of interests that worked for a number of years to identify future use options for the Hanford Site. The HRA-EIS addresses potential remediation impacts for four of the six Hanford geographic areas identified by the Working Group; (1) The Columbia River (Hanford Reach), (2) Reactors on the River (100 Areas), (3) the Central Plateau (200 Areas), and (4) All Other Areas (300, 400, 600, 1100, and 3000 Areas). Remediation of all Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) operable units and Resource Conservation and Recovery Act (RCRA) past-practice waste site as defined under the Tri-Party Agreement located within these geographic areas are included in the scope of this EIS. Decommissioning of selected surplus facilities is also addressed, along with RCRA waste treatment, storage, and disposal (TSD) units located in or near past-practice waste units. The Fitzner-Eberhardt Arid Lands Ecology Reserve and the area north of the Columbia River (North Slope) have been remediated and are considered available for unrestricted uses, and therefore have

not been analyzed as part of this EIS. However, potential future land uses for these two areas are addressed in the Comprehensive Land-Use Plan portion of the Draft HRA-EIS. The alternatives presented in this EIS were developed by applying different levels-of-access scenarios (i.e., restricted use, unrestricted use, and exclusive use) to the different geographic areas identified by the Working Group.

DATES: DOE invites all interested parties to submit written comments concerning the Draft EIS during the comment period ending November 1, 1996. Comments postmarked after that date will be considered to the extent practicable. A public hearing will be conducted on October 17, 1996.

ADDRESSES: Requests for copies of the Draft EIS, further information on the Draft EIS, and/or written comments on the Draft EIS should be directed to Mr. Thomas W. Ferns, DOE National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, MSIN HO-12, Richland, Washington 99352-0550. Requests for copies of the Draft EIS or comments on the Draft EIS can also be made through (1) the Internet at Thomas_W_Ferns@rl.gov, (2) by calling 1-800-786-2018, or (3) by FAX at (509) 376-4360. Locations of Public Reading Rooms and information repositories where the Draft EIS will be available for review are listed in this notice under "SUPPLEMENTARY INFORMATION." The Draft EIS is also available on the DOE Hanford Internet Home Page at <http://www.hanford.gov/eis/hraeis/hraeis.htm>.

Information on the DOE NEPA process may be obtained from Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue SW, MSIN EH-42, Washington, D.C. 20585. Ms. Borgstrom may be contacted by telephone at (202) 586-4600 or by leaving a message at 1-800-472-2756.

The public is also invited to attend a hearing in which oral and written comments will be received on the Draft EIS. Oral and written comments will be considered equally in preparation of the Final EIS. The public hearing will be held on the date and at the location listed below:

Dates: October 17, 1996.
Time: 6:30 p.m.
Location: Shilo Inn.
Addresses: 50 Comstock Street, Ballroom # 1, Richland, WA 99352.

SUPPLEMENTARY INFORMATION:**Background**

On August 21, 1992, DOE published a Notice of Intent (NOI) to prepare the HRA-EIS in the Federal Register (57 FR 37959). The scoping period for the HRA-EIS was scheduled to run from August 21, 1992, to November 25, 1992, but was extended, at the public's request, to January 15, 1993. A notice of this extension was printed on November 25, 1992 (57 FR 55517). During the public scoping period, four scoping meetings were held in the Northwest: Spokane, Washington, on September 29, 1992; Pasco, Washington, on October 1, 1992; Seattle, Washington, on October 5, 1992; and Portland, Oregon, on October 8, 1992. Public comments received during the scoping period were considered by DOE in developing the Draft HRA-EIS. Some comments resulted in modifications of the scope and content of the EIS as set forth in the original NOI. Comments from the public scoping process and the DOE responses to those comments can be found in the Implementation Plan for the HRA-EIS, issued in June 1995 (DOE/RL-93-66).

Recently, DOE issued a policy requiring land and facility-use planning at large multi-function DOE sites (this policy has been incorporated into DOE Order 430.1, "Life-Cycle Asset Management"). To satisfy the requirements of this Order, DOE began development of the Hanford Site Comprehensive Land-Use Plan (Comprehensive Plan). The purpose of the Comprehensive Plan is to guide land and facility-use decisions through the integration of natural, cultural, and socioeconomic factors and to designate existing and future land uses that are appropriate for the Hanford Site, including an evaluation of DOE's responsibilities, authorities, and applicable requirements. In addition, the land-use analysis considers values expressed by other federal agencies; state and local governments; the Tribal Nations; businesses, labor, environmental, and other groups and organizations; and members of the public concerned with or affected by the Hanford Site. These values, taken in conjunction with specific characteristics of the natural and built landscape within the Hanford Site, are used to identify areas of the Hanford Site which could be designated for various future uses.

Copies of the Draft HRA-EIS have been distributed to federal, state, and local officials; Tribal Nations; and agencies, organizations, and individuals who may be interested or affected by the proposed action. The document number

for this EIS is DOE/EIS-0222D. This EIS has been prepared in accordance with NEPA; the Council on Environmental Quality's NEPA regulations, 40 CFR Parts 1500-1508; and the DOE NEPA Implementing Procedures, 10 CFR Part 1021. DOE plans to issue the Final EIS in February of 1996, with a Record of Decision issued no sooner than 30 days after issuance of the Final EIS. The Draft EIS and key supporting technical documentation can be found in the DOE reading rooms and designated information repositories identified at the end of this notice.

Alternatives Considered

Future land-use alternatives discussed in detail in the HRA-EIS are:

- "No-Action"—conduct a long-term monitoring and maintenance program instead of continuing the current program of TSD unit closures, past-practice waste site remedial actions, and surplus facility decommissioning actions (the No-Action Alternative is common to all of the geographic areas, but the specific monitoring and maintenance activities would vary depending on the types of waste sites and facilities found in each area);
- "Columbia River Unrestricted Future Land-Use Alternative"—unrestricted use of the Columbia River geographic area would be achieved through excavation and removal of contaminated riverbank, riverbottom, and island sediments, in conjunction with removal of the river discharge pipelines. This alternative would result in residual contamination levels that would not preclude any human uses within the Columbia River geographic area;
- "Columbia River Restricted Future Land-Use Alternative"—restricted use would be achieved through the removal of physical hazards and contaminants combined with engineering and/or institutional controls. This alternative would result in residual contaminant levels that require some continuing restrictions on human use of the Columbia River geographic area;
- "Reactors on the River Unrestricted Future Land-Use Alternative"—unrestricted use of the Reactors on the River geographic area would be achieved through excavation of contaminated soil and remediation of past-practice waste sites and ground water in conjunction with closure of TSD units and decommissioning of surplus contaminated and uncontaminated facilities associated with the reactors. This alternative would include ground-water remediation to address existing contaminant plumes located in, or

potentially entering into, the Reactors on the River geographic area. Under this alternative, the Reactors on the River geographic area would be remediated to levels that do not preclude any human use. However, access or certain uses might continue to be controlled for other reasons (i.e., the presence of physical hazards or to protect cultural resources and/or sensitive wildlife habitat);

- "Reactors on the River Restricted Future Land-Use Alternative"—restricted future land use for the Reactors on the River geographic area would be achieved through a combination of remedial activities, including excavation and disposal of contaminated soil, remediation of past-practice waste sites, closure of TSD units, site reclamation, decommissioning of surplus facilities, and/or use of engineering and institutional controls. In addition to these potential remediation activities, a ground-water remediation strategy would be employed for the Reactors on the River geographic area. The EIS assesses two primary options for achieving a Restricted Future Land-Use for the Reactors on the River geographic area. The first option (R1) would emphasize removal and disposal of waste and contaminated materials, ground-water remediation, and continuing access restrictions. The second option (R2) would emphasize the placement of engineered caps, or barriers, over waste sites, in addition to ground-water remediation;
- "Central Plateau Exclusive Future Land-Use Alternative"—exclusive future land use of the Central Plateau geographic area would be achieved primarily through engineering and institutional controls, ground-water remediation, and capping of past-practice waste sites and TSD units. Potential health risks due to residual contamination would require strict controls on access. Use of the area would be limited to management of radioactive and hazardous waste, and similar compatible uses;
- "All Other Areas Restricted Future Land-Use Alternative"—restricted future land use in the All Other Areas geographic area could be achieved through a variety of remediation activities, including excavation and disposal of contaminated soil, remediation of past-practice waste sites, closure of TSD units, site reclamation, decommissioning of surplus facilities, and/or use of engineering and institutional controls. In addition to these potential remediation activities, a ground-water remediation strategy would be developed and employed for

the All Other Areas geographic area. The EIS assesses two primary options for achieving a restricted future land use for the All Other Areas geographic area. The first option (R1) would emphasize removal and disposal of waste and contaminated materials, ground-water remediation, and continuing access restrictions. The second option (R2) would emphasize the placement of engineered caps, or barriers, over waste sites, in addition to ground-water remediation.

Preferred Alternative

DOE has not selected a preferred alternative at this time. Following public comment on the Draft EIS, DOE will develop a preferred alternative to be presented in the Final EIS.

Invitation to Comment

DOE has completed the general distribution of the EIS and has filed the document with the U.S. Environmental Protection Agency, which will publish a separate Notice of Availability elsewhere in the Federal Register. The Draft EIS also is available to the public in the DOE reading rooms and designated information repository locations identified in this notice.

Persons interested in speaking at the hearing (see address at the beginning of this notice) may register at the hearing and will be called on to speak on a first-come, first-served basis. Written comments will also be accepted at the hearing, and speakers are encouraged to provide written versions of their oral comments for the record. Oral and written comments will be considered equally in preparing the Final EIS.

The Summary of the HRA-EIS is available for review for those who do not wish to receive the entire Draft EIS. When requesting copies of the HRA-EIS, please specify whether you wish to receive only the Summary (38 pages) or the entire Draft EIS including associated appendices (4 volumes).

DOE Public Reading Rooms and Information Repositories

Suzzallo Library, University of Washington, Government Publications Room, Seattle, Washington 98159, (206) 543-4664
 Foley Center, Gonzaga University, E. 502 Boone, Spokane, Washington 99258, (509) 328-4220, Ext. 3125
 DOE Public Reading Room, Washington State University, Tri-Cities Campus, 100 Sprout Road, Room 130, Richland, Washington 99352, (509) 376-8583
 Branford Price Millar Library, Science and Engineering Floor, Portland State University, SW Harrison and Park,

Portland, Oregon 97207, (503) 725-3690
 DOE Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-5955

Issued this 3rd day of September 1996.
 James M. Owendoff,
Deputy Assistant Secretary for Environmental Restoration.
 [FR Doc. 96-23046 Filed 9-9-96; 8:45 am]
 BILLING CODE 6450-01-P

Oak Ridge Operations Office; Notice of Program Interest—Diesel Engine Technologies for Light Trucks

AGENCY: Transportation Technologies, DOE.

ACTION: Amendment to extend the application due date to September 30, 1996 for Notice of Program Interest—Diesel Engine Technologies for Light Trucks.

SUMMARY: The Department of Energy is extending the due date for receipt of applications in response to the Notice of Program Interest for support of the cooperative development of technologies for a high efficiency, very low emission, diesel engine for light trucks, specifically pickups and sport utility vehicles to September 30, 1996. All other information publicized in the original Notice of Program Interest on August 5, 1996, (61 FR 40629) is unchanged.

Issued in Oak Ridge, Tennessee on September 3, 1996.
 Peter D. Dayton,
Director, Procurement and Contracts Division, Oak Ridge Operations Office.
 [FR Doc. 96-23047 Filed 9-9-96; 8:45 am]
 BILLING CODE 6450-01-P

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Vermont Castings, Inc. From the DOE Vented Home Heating Equipment Test Procedure (Case No. DH-006)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an Interim Waiver to Vermont Castings, Inc. (Vermont Castings) from the existing Department of Energy (DOE or

Department) test procedure regarding pilot light energy consumption and weighted average steady-state efficiency for its manually controlled vented heater, model DV40 (Gas Fired Built In Direct Vent Fireplace).

Today's notice also publishes a "Petition for Waiver" from Vermont Castings. Vermont Castings' Petition for Waiver requests DOE to grant relief from the DOE vented home heating equipment test procedure relating to the use of pilot light energy consumption in calculating the Annual Fuel Utilization Efficiency (AFUE) and the calculation of weighted average steady state efficiency of its model DV20 vented heater. Vermont Castings seeks to delete the required pilot light measurement (Qp) in the calculation of AFUE when the pilot is off, and to test at a minimum fuel input rate of two-thirds instead of the specified ± 5 percent of 50 percent of the maximum fuel input rate in the calculation of AFUE. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 10, 1996.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. DH-006, Mail Stop EE-43, Room 1J-018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-7140.

FOR FURTHER INFORMATION CONTACT: William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0121, (202) 586-9145.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0103, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making informed purchasing

decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the test procedure rules to provide for a waiver process by adding § 430.27 to Title 10 CFR Part 430. 45 FR 64108, September 26, 1980. Subsequently, DOE amended the waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. Title 10 CFR Part 430, § 430.27(a)(2).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. Title 10 CFR Part 430, § 430.27(g). An Interim Waiver remains in effect for a period of 180 days, or until DOE issues a determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 12, 1996, Vermont Castings filed an Application for Interim Waiver and a Petition for Waiver regarding (a) pilot light energy consumption and (b) weighted average steady state efficiency.

Vermont Castings seeks an Interim Waiver from the DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O, that requires measurement of energy input rate of the pilot light (Q_p), and the use of this data in section 4.2.6 for the calculation of AFUE, where:

$$AFUE = \frac{(4400\eta_{SS}\eta_u Q_{in-max})}{(4400\eta_{SS}Q_{in-max} + 2.5(4600)\eta_u Q_p)}$$

Instead, Vermont Castings requests that it be allowed to delete Q_p and accordingly, the $(2.5(4600)\eta_u Q_p)$ term in

the calculation of AFUE. Vermont Castings states that instructions to turn off the transient pilot by the user when the heater is not in use are in the User Instruction Manual and on a label adjacent to the gas control valve. Therefore, the additional energy savings that result when the pilot is turned off ($Q_p = 0$) should be credited. Since the current DOE test procedure does not address pilot light energy savings, Vermont Castings asks that the Interim Waiver be granted.

Vermont Castings also seeks an Interim Waiver from the DOE test provisions in section 3.1.1 of Title 10 CFR Part 430, Subpart B, Appendix O, which requires steady state efficiency of manually controlled vented heaters with various input rates to be determined at a fuel input rate that is within ± 5 percent of 50 percent of the maximum fuel input rate, and the use of this data in section 4.2.4 to determine the weighted average steady state efficiency needed in the calculation of AFUE. Instead, Vermont Castings requests that it be allowed to determine steady state efficiency, weighted average steady state efficiency, and AFUE at a minimum fuel input rate of two-thirds of the maximum fuel input rate for its manually controlled vented heaters which do not adjust to an input rate as low as 50 percent. Since the current DOE test procedure does not address steady state testing for manually controlled vented heaters with various input rates at fuel input rates other than within ± 5 percent of 50 percent of the maximum fuel input rate, Vermont Castings asks that the waiver be granted.

Previous Petitions for Waiver to exclude the pilot light energy input term in the calculation of AFUE for home heating equipment with a manual transient pilot control and allowance to determine weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of 65.3 percent of the maximum fuel input rate instead of the specified ± 5 percent of 50 percent of the maximum fuel input rate have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Incorporated, 56 FR 51714, October 15, 1991; CFM International Inc., 61 FR 17287, April 19, 1996; Vermont Castings, Inc., 61 FR 17290, April 19, 1996; and Superior Fireplace Company, 61 FR 17885, April 23, 1996.

Thus, it appears likely that Vermont Castings' Petition for Waiver for pilot light and weighted average steady state efficiency for home heating equipment will be granted. In those instances where the likely success of the Petition for Waiver has been demonstrated based

upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Vermont Castings an Interim Waiver for its model DV40 vented heater. Vermont Castings shall be permitted to test its model DV40 vented heater on the basis of the test procedures specified in Title 10 CFR Part 430, Subpart B, Appendix O, with the modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.
(ii) Delete paragraph 4.2.4 of Appendix O and replace with the following paragraph:

4.2.4 Weighted Average Steady-State Efficiency. (a) For manually controlled heaters with various input rates, the weighted average steady-state efficiency (η_{SS-wr}) is:

(1) At ± 5 percent of 50 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters, or

(2) At the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters if the design of the heater is such that ± 5 percent of 50 percent of the maximum fuel input rate can not be set, provided the tested input rate is no greater than two-thirds of maximum input rate of the heater.

(b) For manually controlled heater with one single firing rate, the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

(iii) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$$AFUE = \eta_u$$

where:

η_u = as defined in section 4.2.5 of this appendix.

(iv) With the exception of the modification set forth above, Vermont Castings shall comply in all respects with the procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company.

This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

This Interim Waiver is effective on the date of issuance by the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy. The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Vermont Castings' Petition for Waiver requests DOE to grant relief from the DOE vented home heating equipment relating to the pilot light and weighted average steady state efficiency. Vermont Castings seeks (a) to exclude the pilot light energy consumption in the calculation of AFUE, and (b) to determine the weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of two-thirds of the maximum fuel input rate instead of the specified ± 5 percent of 50 percent of the maximum fuel input rate.

Pursuant to paragraph (b) of Title 10 CFR Part 430.27, the Department is hereby publishing the "Petition for Waiver."

The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC, September 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96-23048 Filed 9-9-96; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. RP96-362-000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective September 1, 1996:

Thirteenth Revised Sheet No. 8
Fifteenth Revised Sheet No. 9
Fifteenth Revised Sheet No. 13
Fifteenth Revised Sheet No. 16
Nineteenth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of \$6.2 million of costs that are associated with its obligations to Dakota Gasification

Company ("Dakota"). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS-2 so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would increase current quarterly Dakota Above-Market cost recoveries from \$6.0 million to \$6.2 million, based upon costs incurred from May 1996 through July 1996.

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 385.214 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. 96-22992 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-351-000]

Arkansas Western Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 29, 1996, Arkansas Western Pipeline Company (AWP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 4, to become effective September 1, 1996.

AWP states the proposed changes would decrease revenues from jurisdictional service by \$77.3 thousand based on the 12-month period ending June 30, 1996, as adjusted.

AWP states that the purpose of this filing is to comply with the Commission's Order in Docket No. CP92-570-000 whereby AWP is required to file a general rate change within three years of the in-service date of the proposed facility.

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 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96-22986 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP6-364-000]

Colorado Interstate Gas Company; Notice of Filing

September 4, 1996.

Take notice that on August 30, 1996, Colorado Interstate Gas company (CIG), tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, First Revised Sheet Nos. 228A, 228B and 228C, with a proposed effective date of October 1, 1996.

CIG avers that the filing was made to update the General Terms and Conditions portion of the tariff as it relates to storage. CIG states that based upon data from prior years and particularly the 1995/1996 heating season, the changes are requested to more accurately portray the performance capability of the storage fields.

CIG states that copies of the filing were served upon all holders to CIG's Volume No. 1 tariff.

Any person desiring to be heard or to protest said filing should file with a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. 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. 96-22980 Filed 9-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP96-363-000]

**Colorado Interstate Gas Company;
Notice of Filing**

September 4, 1996.

Take notice that on August 30, 1996, Colorado Interstate Gas Company (CIG) tendered for filing a notice of termination of gathering services for the North Wamsutter and Echo Springs Gathering Areas located in Sweetwater and Carbon Counties, Wyoming.

CIG avers that CIG and Williams Gas Processing-Wamsutter Company (Williams-Wamsutter) have a facilities sales agreement dated December 30, 1993, as amended, that relates to these facilities. CIG states that these facilities will be abandoned by transfer to Williams-Wamsutter. CIG requests that the effective date of the termination of service be September 30, 1996.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 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. 96-22991 Filed 9-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP96-357-000]

**Columbia Gas Transmission
Corporation; Notice of Proposed
Changes in FERC Gas Tariff**

September 4, 1996.

Take notice that on August 30, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised

Volume No. 1, the following tariff sheets to become effective as indicated:

Effective September 1, 1996

Fourteenth Revised Sheet No. 25
Fourteenth Revised Sheet No. 26
Fourteenth Revised Sheet No. 27
Fifteenth Revised Sheet No. 28
Ninth Revised Sheet No. 29
Ninth Revised Sheet No. 30

Effective October 1, 1996

Fifteenth Revised Sheet No. 25
Fifteenth Revised Sheet No. 26
Fifteenth Revised Sheet No. 27
Sixteenth Revised Sheet No. 28

Columbia states that this filing constitutes its Mid-Cycle filing pursuant to Section 36.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1. GTC Section 36, "Transportation Costs Rate Adjustment (TCRA)", enables Columbia to adjust its TCRA rates prospectively to reflect estimated current costs. In this filing, Columbia proposes to adjust its current Operational TCRA and current Stranded TCRA rates.

Columbia states that its filing includes projected costs in the amount of \$15,051,499 for the Operational Account No. 858 contracts, which represents a decrease of \$265,584 from the projected levels established in Docket No. RP96-165, and which are based upon the rates of the applicable pipeline companies at October 1, 1996, and the respective determinants associated with those contracts.

Columbia, states that by this filing, it is also proposing to make an out-of-cycle adjustment so as to eliminate the current stranded demand rates effective September 1, 1996, since it will have fully recovered the stranded TCRA demand costs provided for under its Customer Settlement approved in Docket No. GP94-2, et al., as of August 31, 1996. Elimination of the current stranded demand rate effective September 1, 1996, will allow Columbia's customers to avoid a deferral of over-recoveries of stranded costs.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All 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.

Louis D. Cashell,
Secretary.

[FR Doc. 96-22988 Filed 9-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM97-2-34-001]

**Florida Gas Transmission Company;
Notice of Proposed Changes in FERC
Gas Tariff**

September 4, 1996.

Take notice that on August 29, 1996, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective October 1, 1996, the following tariff sheets:

Substitute Seventeenth Revised Sheet No. 8A
Substitute Tenth Revised Sheet No. 8A.01
Substitute Ninth Revised Sheet No. 8A.02
Substitute Fifteenth Revised Sheet No. 8B
Substitute Eighth Revised Sheet No. 8B.01

FGT states that on August 22, 1996, FGT made a filing in Docket No. TM97-2-34-000 (August 22 Filing) to make changes to the Fuel Reimbursement Charge Percentage (FRCP) and the Unit Fuel Surcharge (UFS) pursuant to Section 27 of the General Terms and Conditions (GTC) of FGT's Tariff. FGT states that the tariff sheets filed with the August 22 Filing were to supersede the tariff sheets filed on August 21, 1996 in Docket No. TM97-1-34-000 (August 21 Filing) which proposed changes to the ACA Charge pursuant to the Annual Charges Billing for Fiscal Year 1996. The ACA charge reflected in the August 21 Filing, and carried forward to the August 22 Filing in the instant docket, was inadvertently calculated from the wrong Unit Charge Factor in the Commission's Annual Charge Billing. FGT is filing herein substitute tariff sheets to reflect the correct ACA charge on the above referenced tariff sheets. No information regarding the FRCP on the UFS has been changed from that filed in the August 22 Filing in Docket No. TM94-2-34-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 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. 96-22972 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-366-000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 3, the tariff sheets listed on Appendix A to the filing, proposed to become effective on October 1, 1996.

FGT states that the proposed changes would increase revenues from jurisdictional service by approximately \$27.4 million for the pre-expansion system, and by approximately \$8.2 million for the Phase III system over the first twelve months, both based on the twelve-month period ended April 30, 1996, as adjusted.

FGT states that this rate filing is made to effectuate changes in the rates and terms applicable to FGT's services under Rate Schedules FTS-1, FTS-2, SFTS, NNTS, and ITS-1, the forms of service agreements thereunder, and the General Terms and Conditions. FGT states that the changes reflected in the tariff sheets, FGT asserts, are also required to make certain operational and administrative changes to FGT's Tariff, including provisions regarding shipper balancing.

Further, FGT states it is eliminating Rate Schedules PTS-1 and PRS and the related forms of service agreements pursuant to the terms of the Settlement dated June 16, 1993 in Docket No. RS92-16-000, et al. In addition, FGT states it is transferring the rate provisions and other terms and conditions of Western Division transportation service, currently included in Rate Schedules FTS-1 and ITS-1, to new Rate Schedules FTS-WD and ITS-WD.

FGT's proposed rates are based on a cost of service of \$159.5 million for the pre-expansion system and \$159.2 million for the Phase III system. FGT states that its filing with respect to the Phase III system reflects the adjustment to common equity and the \$18.75 million reduction to Account No. 101, Gas Plant in Service, provided by the Stipulation and Agreement of

Settlement filed on July 30, 1996 in Docket No. FA94-15-000, which is pending Commission approval.

FGT states that the overall return for the pre-expansion system is 12.19% (reflecting a 9.70% cost of debt and a 14.50% return on common equity) and, for the Phase III system, is 10.50% (reflecting an 8.53% cost of debt and a 14.00% return on common equity). The depreciation component of FGT's cost of service computations for the pre-expansion system reflects an increase in the depreciation rate applicable to FGT's Onshore Transmission Plant from 2.5% to 3.56%. FGT states that, although it is proposing no change in the twenty-five year depreciable life of the Phase III system, FGT has adjusted the depreciation schedule utilizing a levelized rate methodology as provided for by the Phase III Settlement. Such adjusted depreciation schedule reflects the overall higher depreciation expense resulting from the fact that the actual construction costs of the Phase III system were greater than estimated.

In addition, FGT is requesting authorization herein to secure third party storage from Bay Gas Storage Company, Ltd. (Bay Gas) to be utilized to provide No Notice service, including the expanded availability and flexibility of such service as proposed (including customer-requested increased winter quantities). FGT respectfully requests that the Commission grant whatever authorization is deemed necessary by December 1, 1996, so that FGT may proceed with the acquisition of such storage under the terms of its letter of intent with Bay Gas.

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 Sections 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 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. 96-22979 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1494-120]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

September 4, 1996.

A final environmental assessment (FEA) is available for public review. The FEA is for an application to upgrade six of the project's generating units for the Pensacola Hydroelectric Project, Project No. 1494-120. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Pensacola Hydroelectric Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below. For further information, please contact the project manager, Robert J. Fletcher, at (202) 219-1206.

Lois D. Cashell,
Secretary.

[FR Doc. 96-22983 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-51-000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective October 1, 1996.

Sixth Revised Sheet No. 7

Great Lakes states that the above-referenced tariff sheet is being filed to reflect the new ACA rate to be charged pursuant to the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued May 29, 1987. The new ACA rate to be charged by Great Lakes was established by FERC notice given on July 29, 1996 and is to be effective October 1, 1996.

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 Section

385.214 and Section 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 Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-22976 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-11-000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

(September 4, 1996).

Take notice that on August 30, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1996:

Thirteenth Revised Sheet No. 20
Twelfth Revised Sheet No. 21
Thirteenth Revised Sheet No. 22
Eighth Revised Sheet No. 23
Thirteenth Revised Sheet No. 24

Koch Gateway Pipeline states that the above listed tariff sheets are being filed to reflect the decrease in the Annual Charge Adjustment (ACA) reflected in Koch's FERC Gas Tariff.

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 Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by 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 part 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. 96-22978 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-361-000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1996:

Title Page
Fourth Revised Sheet No. 1412
Second Revised Sheet No. 1704
Second Revised Sheet No. 1705
Third Revised Sheet No. 1706
Second Revised Sheet No. 1709
Third Revised Sheet No. 1710
Third Revised Sheet No. 1907
Fifth Revised Sheet No. 2705
Fifth Revised Sheet No. 2706
Third Revised Sheet No. 2707
Second Revised Sheet No. 3300

Koch is submitting the referenced tariff sheets to comply with Order No. 582. The Tariff revisions include Koch's discount policy, required reports, and miscellaneous compliance changes, all as more fully described below.

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 Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by 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 part 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. 96-22990 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-114-000]

Mobile Bay Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Mobile Bay Pipeline Company (Mobile Bay) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff

sheets, to become effective October 1, 1996:

Fourth Revised Sheet No. 4

Mobile Bay states that the above listed tariff sheet is being filed to reflect the decrease in the Annual Charge Adjustment (ACA) reflected in Mobil Bay's FERC Gas Tariff.

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 Sections 385.214 and 385.211 of the Commission's rule and regulations. All such motions or protests must be filed as provided by 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 part 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. 96-22973 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-358-000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 4, 1996.

Take notice that on August 30, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventeenth Revised Sheet No. 5, with a proposed effective date of October 1, 1996.

National states that this filing reflects the quarterly adjustment to the reservation component of the EFT rate pursuant to the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.11 or 385.14). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-22981 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-59-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Northern Natural Gas Company (Northern) tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, proposed to be effective October 1, 1996:

Fifth Revised Volume No. 1

Twenty-Sixth Revised Sheet No. 50

Twenty-Sixth Revised Sheet No. 51

Eleventh Revised Sheet No. 52

3 Revised 30 Revised Sheet No. 53

Eleventh Revised Sheet No. 59

Twelfth Revised Sheet No. 60

Original Volume No. 2

151 Revised Sheet No. 1C

Twenty-Sixth Revised Sheet No. 1C.a

Northern states that the filing establishes the revised Annual Charge Adjustment (ACA) rate effective October 1, 1996, for Northern's transportation rates. The ACA rate is designed to recover the charge assessed by the Commission pursuant to Part 382 of the Commission's Regulations.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E. Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-22975 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-354-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 4 1996.

Take notice that on August 30, 1996, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858—Reverse Auction surcharges, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Twenty Fifth Revised Sheet Nos. 50 and 51 and Thirty First Revised Sheet No. 53 to be effective October 1, 1996.

Northern states that copies of this filing were served upon the Company's 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, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should 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 protestant a party to the proceedings. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-22987 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-64-000]

Pacific Interstate Offshore Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Pacific Interstate Offshore Company (PIOC) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with a proposed effective date of October 1, 1996:

Third Revised Sheet No. 6

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .20 cents per MMBtu, effective October 1, 1996.

PIOC states that a copy of this filing has been served on PIOC's sole customer, the Southern California Gas Company and the Public Utilities Commission of the State of California and other interested parties.

Any person desiring to be heard or 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 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriation 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. 96-22974 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP96-239-001 and RP96-168-001]

Questar Pipeline Company; Notice of Tariff Filing

September 4, 1996.

Take notice that on August 29, 1996, Questar Pipeline Company, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 3, the following tariff sheets to become effective as shown:

First Revised Volume No. 1

Third Revised Sheet No. 92—effective June 19, 1996
 Fourth Revised Sheet No. 172—effective June 19, 1996
 Original Volume No. 3
 Substitute Sixteenth Revised Sheet No. 8—effective March 1, 1996

Questar states that the proposed tariff sheets (1) correct the pagination of Sheet Nos. 92 and 172 and (2) incorporate into Sheet No. 8 base tariff rates as accepted by the Commission in Docket No. RP95-407. Questar has requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective as proposed.

Questar states further that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's 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. 96-22985 Filed 9-9-96; 8:45 am]
 BILLING CODE 6717-01-M

[Docket No. RP96-64-003]

South Georgia Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 29, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, effective January 1, 1996.

First Substitute Fourth Revised Sheet No. 6

South Georgia states that this tariff sheet is being filed to correct an inadvertent error contained on fourth Revised Sheet No. 6 submitted by South Georgia as part of its filing in the captioned docket on August 22, 1996.

South Georgia states that copies of this filing have been served on all shippers and interested state commissions.

Any person desiring to protest this filing should file 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 Procedures (18 CFR Section 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-22984 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-757-000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

September 4, 1996.

Take notice that on August 29, 1996, Transportation Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP96-757-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service between Transco and Chevron U.S.A., Inc. (Chevron), formerly Gulf Oil Corporation, under Rate Schedule X-182, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that pursuant to an April 5, 1978, exchange agreement, Transco receives up to 20,000 Mcf per day of gas from Chevron's reserves in the High Island Area Block 111, Offshore Texas and Chevron receives equivalent quantities of gas purchased by Transco in the South Timbalier Block 148, Offshore Louisiana. It is stated that the High Island 111 volumes are delivered into Transco's existing North High Island System and the South Timbalier 148 volumes are delivered into Chevron's existing Offshore Gathering System. Transco states that the primary term of the agreement is for 15 years from the date of initial delivery and from year to year thereafter until terminated by either party upon one year's notice.

Transco states that by letter dated August 15, 1996, Transco and Chevron have mutually agreed to the termination of the exchange service to be effective the date of the order approving such termination.

Transco also states that upon abandonment of the exchange service,

Transco will abandon in place, pursuant to blanket certificate authorization, the C&K South Timbalier Block 148 platform "A" meter station and 70 feet of platform piping located in Offshore Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 25, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 96-22982 Filed 9-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-359-000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

September 4, 1996.

Take notice that on August 30, 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 to the filing. The proposed effective date of the tariff sheets is October 1, 1996.

Transco states that the purpose of the filing is to establish the flexibility under Transco's tariff to negotiate rates in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, issued January 31, 1996 in Docket No. RM95-6-000, and applicable precedent.

Transco states that copies of the filing are being mailed to each of its customers, interested State Commissions and other interested parties.

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 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. 96-22989 Filed 9-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM97-1-49-000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, to become effective October 1, 1996:

Second Revised Volume No. 1

Twentieth Revised Sheet No. 15
Twenty-third Revised Sheet No. 18
Twentieth Revised Sheet No. 18
Seventeenth Revised Sheet No. 21

Original Volume No. 2

Sixty-fourth Revised Sheet No. 11B

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges under 18 CFR Part 382 and Section 41 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1. The filing incorporates the Commission approved ACA surcharge of .231 cents per Mcf (.215 cents per dkt on the Williston Basin system), a decrease of .0020 cents per Mcf from the current amount.

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, D.C. 20426, in accordance with Rules 211 and 215 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding 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. 96-22977 Filed 9-9-96; 8:45 am]
BILLING CODE 6717-01-M

Sunshine Act Meeting

September 4, 1996.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: September 11, 1996 10:00 A.M.

Place: Room 2C, 888 First Street, N.E. Washington, D.C. 20426.

Status: Open.

Matters to be Considered Agenda: Note—Items Listed on the Agenda May Be Deleted Without Further Notice.

Contact Person for More Information: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro

658th Meeting—September 11, 1996, Regular Meeting (10:00 A.M.)

CAH-1.
DOCKET# P-3494 036 ALLEGHENY NO. 6 HYDRO PARTNERS
OTHER#S P-3671 034 ALLEGHENY HYDRO PARTNERS

CAH-2.
DOCKET# P-10934 004 WILLIAM B. RUGER, JR.

CAH-3.
DOCKET# P-2413 026 GEORGIA POWER COMPANY

CAH-4.
DOCKET# P-10536 001 PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, WASHINGTON

CAH-5.
DOCKET# P-11575 000 AKRON HYDROELECTRIC COMPANY

Consent Agenda—Electric

CAE-1.
DOCKET# ER96-2408 000 WWP RESOURCE SERVICES, INC.

CAE-2.
DOCKET# ER96-2463 000 ALLEGHENY POWER SYSTEM

CAE-3.
DOCKET# ER96-2466 000 NEW YORK STATE ELECTRIC & GAS CORPORATION

CAE-4. OMITTED

CAE-5.
DOCKET# ER96-2467 000 WASHINGTON WATER POWER COMPANY, IDAHO POWER COMPANY AND MONTANA POWER COMPANY, ET AL.

CAE-6.
DOCKET# ER96-1447 000 MID-CONTINENT AREA POWER POOL

CAE-7.
DOCKET# ER96-350 000 IDAHO POWER COMPANY

CAE-8.
DOCKET# ER94-734 000 NEW CHARLESTON POWER, L.P.

CAE-9.
DOCKET# TX96-6 000 MONTANA POWER COMPANY

CAE-10.
DOCKET# ER96-495 000 FLORIDA POWER & LIGHT COMPANY
OTHER#S ER96-1001 000 FLORIDA POWER & LIGHT COMPANY

CAE-11.
DOCKET# ER96-1211 000 OCEAN STATE POWER

OTHER#S ER96-1212 000 OCEAN STATE POWER II

CAE-12. OMITTED

CAE-13.
DOCKET# ER93-150 009 BOSTON EDISON COMPANY
OTHER#S EL93-10 006 BOSTON EDISON COMPANY
EL94-73 001 COMMONWEALTH ELECTRIC COMPANY V. BOSTON EDISON COMPANY

CAE-14.
DOCKET# TX95-4 000 AMERICAN MUNICIPAL POWER-OHIO, INC. V. OHIO EDISON COMPANY

CAE-15.

- DOCKET# OA96-6 000 NORTHERN STATES POWER COMPANY (WISCONSIN) AND NORTHERN STATES POWER COMPANY (MINNESOTA)
- OTHER#S OA96-8 000 UPPER PENINSULA POWER COMPANY
- OA96-23 000 VERMONT ELECTRIC POWER COMPANY, INC. AND VERMONT ELECTRIC TRANSMISSION COMPANY, INC.
- OA96-25 000 BLACK CREEK HYDRO, INC.
- OA96-26 000 NEWCORP RESOURCES, INC.
- OA96-45 000 ELECTRIC ENERGY, INC.
- OA96-58 000 GRAHAM COUNTY ELECTRIC COOPERATIVE, INC.
- OA96-59 000 OREGON TRAIL ELECTRIC CONSUMERS COOPERATIVE
- OA96-65 000 BARRON ELECTRIC COOPERATIVE
- OA96-71 000 MADISON GAS & ELECTRIC COMPANY
- OA96-81 000 INDIANAPOLIS POWER & LIGHT COMPANY
- OA96-103 000 EXETER & HAMPTON ELECTRIC COMPANY
- OA96-104 000 UNITIL POWER CORPORATION
- OA96-105 000 CONCORD ELECTRIC COMPANY
- OA96-107 000 FITCHBURG GAS & ELECTRIC LIGHT COMPANY
- OA96-143 000 GOLDEN SPREAD ELECTRIC COOPERATIVE
- OA96-148 000 RAYBURN COUNTY ELECTRIC COOPERATIVE, INC.
- OA96-149 000 ANOKA ELECTRIC COOPERATIVE
- OA96-150 000 OLD DOMINION ELECTRIC COOPERATIVE, INC.
- OA96-160 000 NEW ENGLAND ELECTRIC TRANSMISSION CORPORATION AND NEW ENGLAND HYDRO TRANSMISSION ELECTRIC CO., ET AL.
- OA96-173 000 EDISON SAULT ELECTRIC COMPANY
- OA96-180 000 INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION
- OA96-181 000 PEOPLE'S ELECTRIC COOPERATIVE
- OA96-211 000 NORTHWESTERN WISCONSIN ELECTRIC COMPANY
- OA96-216 000 CITIZENS UTILITIES COMPANY
- OA96-217 000 CONSOLIDATED WATER POWER COMPANY
- OA96-219 000 VERMONT MARBLE POWER DIVISION OF OMYA, INC.
- CAE-16.
- DOCKET# EL93-45 001 METROPOLITAN DADE COUNTY, FLORIDA V. ENERGY SYSTEMS DIVISION OF THERMO ELECTRON CORPORATION, ET AL.
- OTHER#S ER94-783 000 SOUTH FLORIDA COGENERATION ASSOCIATES
- QF83-248 003 ENERGY SYSTEMS DIVISION OF THERMO ELECTRON CORPORATION, ET AL.
- CAE-17.
- DOCKET# ER96-1088 002 WISCONSIN PUBLIC SERVICE CORPORATION, WPS ENERGY SERVICES, INC. AND WPS POWER DEVELOPMENT, INC.
- OTHER#S ER95-1528 003 WISCONSIN PUBLIC SERVICE CORPORATION
- CAE-18A. OMITTED
- CAE-18B. OMITTED
- CAE-19.
- DOCKET# ER95-1453 001 COMMONWEALTH ELECTRIC COMPANY
- CAE-20.
- DOCKET# EL91-13 003 NORTHERN STATES POWER COMPANY (MINNESOTA) V. SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY
- CAE-21.
- DOCKET# ER95-791 002 JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
- CAE-22. OMITTED
- CAE-23. OMITTED
- CAE-24.
- DOCKET# EL96-56 000 COMUNIDADES UNIDAS CONTRA LA CONTAMINACION V. AES PUERTO RICO, L.P.
- OTHER#S QF96-28 001 AES PUERTO RICO, L.P.
- CAE-25.
- DOCKET# EL94-81 002 OGLETHORPE POWER CORPORATION V. GEORGIA POWER COMPANY
- CAE-26.
- DOCKET# RM95-9 000 OPEN ACCESS SAME-TIME INFORMATION SYSTEM (FORMERLY REAL-TIME INFORMATION NETWORKS) AND STANDARDS OF CONDUCT
- CAE-27.
- DOCKET# EL95-59 000 SOUTHWESTERN PUBLIC SERVICE COMPANY
- CAE-28.
- DOCKET# RM96-17 000 CHANGES IN FORM NO. 1 INSTRUCTIONS
- CAE-29.
- DOCKET# EL95-38 000 SITHE/ INDEPENDENCE POWER PARTNERS, L.P. V. NIAGARA MOHAWK POWER CORPORATION
- CAE-30.
- DOCKET# ER96-1794 000 SOUTHERN COMPANIES
- CAE-31. OMITTED
- Consent Agenda—Gas and Oil*
- CAE-1.
- DOCKET# RP96-317 000 GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
- CAE-2.
- DOCKET# RP96-338 000 TEXAS EASTERN TRANSMISSION CORPORATION
- CAG-3.
- DOCKET# RP96-337 000 PACIFIC GAS TRANSMISSION COMPANY
- CAG-4.
- DOCKET# RP96-340 000 QUESTAR PIPELINE COMPANY
- CAG-5.
- DOCKET# PR95-16 001 OLYMPIC PIPELINE COMPANY
- OTHER#S PR95-17 001 OLYMPIC PIPELINE COMPANY
- CAG-6.
- OMITTED
- CAG-7.
- OMITTED
- CAG-8.
- DOCKET# RP96-211 000 TRANSCONTINENTAL GAS PIPE LINE CORPORATION
- CAG-9.
- DOCKET# RP96-238 001 TEXAS GAS TRANSMISSION CORPORATION
- CAG-10.
- DOCKET# RP88-262 031 PANHANDLE EASTERN PIPE LINE COMPANY
- CAG-11.
- DOCKET# RP93-36 014 NATURAL GAS PIPELINE COMPANY OF AMERICA
- CAG-12.
- DOCKET# RP96-128 001 NATURAL GAS PIPELINE COMPANY OF AMERICA
- OTHER#S RP95-326 008 NATURAL GAS PIPELINE COMPANY OF AMERICA
- CAG-13.
- DOCKET# RP96-180 000 STINGRAY PIPELINE COMPANY
- CAG-14.
- DOCKET# RP96-209 001 KOCH GATEWAY PIPELINE COMPANY
- CAG-15.
- DOCKET# RP96-339 000 PACIFIC GAS TRANSMISSION COMPANY
- CAG-16.
- DOCKET# RP96-342 000 MISSISSIPPI RIVER TRANSMISSION CORPORATION
- CAG-17.
- DOCKET# RP94-149 000 PACIFIC GAS TRANSMISSION COMPANY
- OTHER#S RP94-145 000 PACIFIC GAS TRANSMISSION COMPANY
- RP94-145 004 PACIFIC GAS TRANSMISSION COMPANY
- RP94-149 005 PACIFIC GAS TRANSMISSION COMPANY
- RP95-141 002 PACIFIC GAS TRANSMISSION COMPANY
- CAG-18.
- DOCKET# RP96-129 003 TRUNKLINE GAS COMPANY
- CAG-19.
- DOCKET# RP96-253 003 NATURAL GAS PIPELINE COMPANY OF AMERICA
- CAG-20.
- DOCKET# RP96-244 002 KOCH GATEWAY PIPELINE COMPANY
- CAG-21.
- DOCKET# RP96-110 002 CARNEGIE INTERSTATE PIPELINE COMPANY
- CAG-22.
- DOCKET# RP93-197 000 UNION PACIFIC FUELS, INC., ET AL. V. SOUTHERN CALIFORNIA GAS COMPANY
- OTHER#S RP93-194 000 SOUTHERN CALIFORNIA UTILITY POWER POOL AND IMPERIAL IRRIGATION DISTRICT V. SOUTHERN CALIFORNIA GAS COMPANY
- RP94-51 000 SHELL WESTERN E&P INC. V. SOUTHERN CALIFORNIA GAS COMPANY
- CAG-23.
- DOCKET# OR96-11 000 EXPRESS PIPELINE PARTNERSHIP
- OTHER#S OR96-11 001 EXPRESS PIPELINE PARTNERSHIP
- CAG-24.
- OMITTED
- CAG-25.

DOCKET# MG96-15 000 KOCH
GATEWAY PIPELINE COMPANY
CAG-26.
DOCKET# CP89-629 031 TENNESSEE
GAS PIPELINE COMPANY
OTHER#S CP89-634 022 IROQUOIS GAS
TRANSMISSION SYSTEM, L.P.
CP90-639 019 TENNESSEE GAS PIPELINE
COMPANY
CP91-2677 006 IROQUOIS GAS
TRANSMISSION SYSTEM, L.P.
CAG-27.
DOCKET# CP96-583 000 MIDCON TEXAS
PIPELINE CORPORATION
CAG-28.
DOCKET# CP94-762 000 COLORADO
INTERSTATE GAS COMPANY
OTHER#S CP95-26 000 MIGC, INC.
CAG-29.
DOCKET# CP96-271 000 WILLIAMS
NATURAL GAS COMPANY
CAG-30.
DOCKET# CP96-288 000 WYOMING
INTERSTATE COMPANY, LTD.
OTHER#S CP96-335 000 COLORADO
INTERSTATE GAS COMPANY
CAG-31.
DOCKET# CP96-289 000 COLORADO
INTERSTATE GAS COMPANY
CAG-32.
DOCKET# CP96-506 000 TRAILBLAZER
PIPELINE COMPANY
CAG-33.
DOCKET# CP87-39 004 GRANITE STATE
GAS TRANSMISSION, INC
CAG-34.
DOCKET# CP96-337 000 ANR PIPELINE
COMPANY
CAG-35.
DOCKET# CP96-497 000 VALERO
TRANSMISSION COMPANY AND
WEST TEXAS GAS, INC.
CAG-36.
DOCKET# CP95-755 000 MISSOURI GAS
ENERGY, A DIVISION OF SOUTHERN
UNION COMPANY V. PANHANDLE
EASTERN PIPE LINE COMPANY
CAG-37.
OMITTED
CAG-38.
DOCKET# CP96-11 000 CITRUS ENERGY
SERVICES, INC.
OTHER#S CP96-12 000 FLORIDA GAS
TRANSMISSION COMPANY

Hydro Agenda

H-1.
RESERVED
Electric Agenda!
E-1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR-1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC-1.
RESERVED

Lois D. Cashell,
Secretary.

[FR Doc. 96-23137 Filed 9-5-96; 4:23 pm]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[SWH-FRL-5607-7]

RIN 2050-AD84

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Solvents and Petroleum Refining

AGENCY: U.S. Environmental Protection
Agency.

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection
Agency is making available to the public
two studies—one on certain petroleum
refining wastes and another on the uses
of certain chemicals as solvents.

ADDRESSES: The studies are available for
viewing in the EPA RCRA Information
Center, Docket Number F-96-SPSA-
FFFFF. The address is U.S. EPA, Crystal
Gateway, First Floor, 1235 Jefferson
Davis Highway, Arlington, VA. The
docket is open from 9 a.m. to 4 p.m.,
Monday through Friday, excluding
Federal holidays. The public must make
an appointment to review docket
materials by calling (703) 603-9230. The
public may copy material from any
regulatory docket at no cost for the first
100 pages, and at \$0.15 per page for
additional copies.

FOR FURTHER INFORMATION CONTACT: The
RCRA/Superfund Hotline toll-free, at
(800) 424-9346, or at (703) 920-9810 in
the Washington, DC metropolitan area.
The TDD Hotline number is (800) 553-
7672 (toll-free) or (703) 486-3323 in the
Washington, DC metropolitan area. For
technical information on the studies,
contact Mr. Max Diaz, (703) 308-0439
(petroleum), or Mr. Ron Josephson,
(703) 308-0442 (solvents), U.S. EPA
Office of Solid Waste, Waste
Identification Branch (5304W), 401 M
St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The
Environmental Defense Fund (EDF) and
EPA entered into a consent decree to
resolve most of the issues raised in a
civil action undertaken by the
Environmental Defense Fund (*EDF v.*
Browner, Civ. No. 89-0598 (D.D.C.)),
under the Solid Waste Disposal Act, 42
U.S.C. 6901 et seq., as amended
(commonly referred to as RCRA). In that
action, the Agency agreed, among other
things, to a schedule for conducting
studies on certain spent solvent and
petroleum refining wastes. The consent
decree was approved by the court on
December 9, 1994. As modified, the
consent decree provides that the final
reports are scheduled to be issued on or
before August 30, 1996.

The solvents study addresses wastes
associated with the use of certain
materials as solvents, the toxicity of the
wastes, and a description of the
management practices for the wastes.
These materials are: diethylamine,
aniline, ethylene oxide, allyl chloride,
1,4-dioxane, 1,1-dichloroethylene, and
bromoforn.

The petroleum study characterizes the
following petroleum refining wastes and
how they are managed: Desalting sludge
from crude desalting, off-specification
product and fines from residual
upgrading, residual oil storage tank
sludge, treating clay from clay filtering,
treating clay from the extraction/
isomerization process, catalyst from
catalytic hydrocracking, process sludge
from residual upgrading, off-
specification product from sulfur
complex and H₂S removal facilities,
catalyst from extraction/isomerization
process, treating clay from lube oil
processing, off-specification treating
solution from sulfur complex and H₂S
removal facilities, catalyst from
polymerization, treating clay from
alkylation, acid soluble oil from HF
alkylation, and catalyst from HF
alkylation. The report includes a
discussion of the concentration of toxic
constituents in each waste, the volume
of each waste generated, and the
management practices for each waste
(including plausible mismanagement
practices).

Additional information pertaining to
these studies is available in the RCRA
Section 3007 Questionnaire data used in
the development of EPA's petroleum
listing determination proposal, 60 FR
57747 (November 20, 1995), and the
solvent listing determination proposal,
61 FR 42318 (August 14, 1996). Please
see docket numbers F-95-PRLP-FFFFF
(petroleum) or F-96-SLDP-FFFFF
(solvents).

Dated: August 30, 1996.

Loretta Marzetti,

Acting Director, Office of Solid Waste.

[FR Doc. 96-23065 Filed 9-9-96; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5607-4]

Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee (CSIC-AMS)

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice of open public advisory
meeting via conference call of the
Common Sense Initiative Council,
Automobile Manufacturing Sector
Subcommittee (CSIC-AMS).

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative Council will hold an open meeting via conference call on September 26, 1996.

OPEN MEETING NOTICE: Notice is hereby given that the Environmental Protection Agency is holding an open meeting via conference call of the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative Council on September 26, 1996. The meeting will begin at 10:00 a.m. EDT and run until 2:00 p.m. EDT.

This meeting will be a follow-up to previous discussions regarding regulatory projects to be addressed by the CSIC-AMS. The CSIC-AMS is planning to decide whether or not there are regulatory issues they would like to address for the automobile manufacturing industry in this forum. The CSIC-AMS will also receive brief updates from the Life-Cycle Management/Supplier Partnership Project Team and Alternative Sector Regulatory System/Community Technical Assistance Project Team.

A limited number of lines have been reserved for public participation. Lines will be made available through reservations on a first come, first serve basis. Advance registration is required to obtain a reservation. Any person or organization interested in participating in the meeting should contact Keith Mason, Alternate Designated Federal Officer, no later than September 23, 1996, at (202) 260-1360. Each individual or group wishing to make oral presentations will be allowed a total of three minutes. For further information concerning this meeting, contact Keith Mason, Alternate DFO on (202) 260-1360, Julie Lynch, Alternate DFO on (202) 260-4000, or Carol Kemker, DFO, on (404) 347-3555, extension 4222.

INSPECTION OF CSIC DOCUMENTS: After the meeting, documents relating to this meeting, together with the official minutes, will be available for public inspection in Room 2821 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street, SW., Washington, DC 20460, phone (202) 260-7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherines@epamail.epa.gov.

Dated: September 4, 1996.

Robert English,

Acting Designated Federal Officer.

[FR Doc. 96-23064 Filed 9-9-96; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS-44630; FRL-5392-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on refractory ceramic fibers (RCFs) (CAS No. 142844-00-6), submitted pursuant to a Testing Consent Order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-541A, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551; E-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all results of testing conducted pursuant to a consent order must be announced to the public in accordance with the procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for refractory ceramic fibers were submitted by three member companies of the Refractory Ceramic Fiber Coalition (Carborundum Company, Premier Refractories and Chemicals, Incorporated, and Thermal Ceramics, Incorporated) pursuant to a Testing Consent Order at 40 CFR 799.5000. They were received by EPA on June 23, 1996. The submission describes workplace exposure monitoring data from RCFC company facilities, as well as from their customers' facilities. The customers selected include those chosen at random and those who specifically requested monitoring. Air monitoring samples were collected from employees engaged in RCF fiber production and processing, or use in functional categories such as forming, finishing, and installation.

RCFs are used as insulation for industrial insulation applications such as high temperature furnaces, heaters, and kilns. RCFs are also used in automotive applications, aerospace uses, and in certain commercial appliances such as self-cleaning ovens.

EPA has initiated its review and evaluation process for these data

submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44630). This record includes copies of all data reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.
Dated: August 28, 1996.

Williams H. Sanders III,
Director, Office of Pollution Prevention and Toxics.

[FR Doc. 96-22966 Filed 9-9-96; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5560-8]

Ocotillo-Coyote Wells Aquifer in Imperial County, California; Sole Source Aquifer Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to Section 1424(e) of the Safe Drinking Water Act, the Regional Administrator of the Environmental Protection Agency (EPA) has determined that the Ocotillo-Coyote Wells Aquifer, underlying portions of Imperial County, California, is the sole or principal source of drinking water for Ocotillo, Nomirage, Yuha Estates, and Coyote Wells and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the Ocotillo-Coyote Wells area and its streamflow source zones will be subject to EPA review to ensure that these projects are designed and constructed such that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 P.M. Eastern time on September 24, 1996.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S.

Environmental Protection Agency, Region 9, Ground Water Protection Section, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Wendy L. Melgin, Hydrogeologist, Ground Water Protection Section, U.S. EPA Region 9, at 415-744-1831.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h-3(e), P.L. 93-523) states:

(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principle drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On May 2, 1994, EPA received a petition from "The Ocotillo Club", which petitioned EPA to designate the Ocotillo-Coyote Wells Aquifer as a sole source aquifer. A public hearing was conducted on September 21, 1995 in Ocotillo, California, and the public was permitted to submit comments and information on the petition until March 25, 1996.

II. Basis for Determination

The factors to be considered by the Administrator in connection with the designation of an area under Section 1424(e) are: (1) Whether the Ocotillo-Coyote Wells Aquifer is the area's sole or principle source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of technical information available to this Agency, the Administrator has made the following findings, which are the bases for the determination noted above:

1. The Ocotillo-Coyote Wells Aquifer currently serves as the "sole source" of drinking water for the residents of Ocotillo, Coyote Wells, Yuha Estates and Nomirage.

2. Contamination of the aquifer would create a significant hazard to public health. There is no economically feasible alternative drinking water source near the designated area.

3. The determination of the boundary of the Sole Source Aquifer is consistent with EPA's Sole Source Aquifer designation Decision Process: Petition Review Guidance (Office of Ground Water Protection, 1987).

III. Description of the Ocotillo-Coyote Wells Sole Source Aquifer

The Ocotillo-Coyote Wells Sole Source Aquifer underlies an 87-square mile area in the southwestern corner of Imperial County, near Ocotillo, California. Ocotillo is approximately 25 miles west of El Centro and 90 east of San Diego. Ground water is found primarily in the saturated Quaternary-age alluvial valley-fill deposits, which are derived from the surrounding mountains and consist of fine sand and gravel interspersed with silts and clays of varying thickness and extent.

The designated area includes the surface area above the alluvial unconfined aquifer and the surrounding recharge areas located in the Jacumba and Coyote Mountains. The boundaries of the sole source aquifer are largely topographically defined along major surface watershed boundaries in the Jacumba and Coyote Mountains, with the exception of the Elsinore Fault boundary and the boundary with the U.S.-Mexican border. The Elsinore fault was chosen as a boundary because it separates the sole source aquifer area, which contains high quality, potable water, from high saline, non-potable water to the east of the fault.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public and various technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region IX, Ground Water Protection Section, 75 Hawthorne Street, San Francisco, California 94105.

V. Project Review

EPA Region IX will work with the Federal agencies that may in the future provide financial assistance to projects within the boundaries of the Ocotillo-Coyote Wells Sole Source Aquifer. EPA will seek to develop agreements with other Federal Agencies whereby EPA will be notified of proposed commitments of Federal financial assistance for projects which could contaminate the aquifer. In the event that a Federal financially assisted project could contaminate the Ocotillo-Coyote Wells Sole Source Aquifer

through its recharge zone so as to create a hazard to public health, no commitment of Federal financial assistance will be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to insure it will not contaminate the aquifer.

Although the project review process cannot be delegated, EPA will consider, to the maximum extent possible, any existing or future state, tribal, and local control mechanisms in protecting the ground water quality of the aquifer.

VI. Summary of Public Comments

The public hearing, held in Ocotillo, California on September 21, 1995, was attended by 28 people, with 9 people speaking. Of those who expressed an opinion, four supported the designation of a Sole Source Aquifer. Of those who submitted comments, fifteen opposed the designation and 29 supported the designation. The public's written and oral comments are fully addressed in EPA's Responsiveness Summary which is available to the public during normal business hours at the U.S. Environmental Protection Agency, Region IX, Ground Water Protection Section, 75 Hawthorne Street, San Francisco, California 94105.

Dated: August 14, 1996.

Alexis Strauss,

Acting Regional Administrator.

[FR Doc. 96-23066 Filed 9-9-96; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Sunshine Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 12, 1996, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883-4025, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

B. *Report*

—Farm Credit System Building Association Quarterly Report

Dated: September 6, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96-23239 Filed 9-6-96; 2:06 pm]

BILLING CODE 6750-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

September 3, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 10, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: A Federal Register notice published on May 9, 1996 indicated that this collection was being reviewed under delegated authority. Since publication of that notice the collection has been slightly modified. Therefore, the Commission is submitting the collection to OMB for review and approval.

OMB Approval Number: 3060-0053.

Title: Application for Consent to Transfer of Control of Corporation Holding Station License.

Form No: 703.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit; Not for profit institutions.

Number of Respondents: 757.

Estimated Time Per Response: 36 minutes.

Total Annual Burden: 454 hours.

Estimated Respondent Costs: \$34,000.

Needs and Uses: FCC Rules require that applicants in the Private Land Mobile, General Mobile, Marine, Aviation and Experimental Radio Services submit FCC Form 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station. This form is required by the Communications Act of 1934, as amended; International Radio Regulations, General Secretariat of International Telecommunications Union and FCC Rules—47 CFR Parts 1.922, 1.924, 5.55, 80.19, 87.21, 87.31, 90.119, and 95.111.

The form is being revised to delete reference to Part 94 applicants (as a result of Part 101, these applicants will no longer be required to file on FCC 703). A space has been added for the applicant to provide an Internet address. This will provide an additional contact media should the FCC have any questions concerning the filing. As a result of the Debt Collection Improvement Act of 1996, the FCC is required to collect the Taxpayer Identification Number. A space has been provided on the form for applicant's

Employee Identification Number. This form is only filed by corporate applicants therefore, no reference is made to a Social Security Number. In addition, the drug certification question has been deleted and this certification requirement has been included with the certification text. The information will be used by the Commission to determine continued eligibility for licensees. Without this information, violations of ownership regulations could occur.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-23021 Filed 9-9-96; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, September 3, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

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 Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), 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)(4), (c)(6), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 - 17th Street, N.W., Washington, D.C.

Dated: September 3, 1996.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96-23227 Filed 9-6-96; 8:45 am]

BILLING CODE 6714-01-M

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, September 12, 1996, to conduct a public hearing, and to consider testimony, on types of proposed or existing stored value card systems, similar electronic payment systems, and the safety and soundness concerns raised by the emergence of these new technologies.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416-2449 (Voice); (202) 416-2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: September 5, 1996.
Federal Deposit Insurance Corporation.
Jerry L. Langley,
Executive Secretary.
[FR Doc. 96-23229 Filed 9-6-96; 1:36 pm]
BILLING CODE 6714-01-M

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board; Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Tuesday, September 17, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule Governing Putable Advances.
- Proposed Rule Governing Advances to Nonmember Mortgagees.
- Second Round AHP Awards for the FHLBanks of Pittsburgh and Indianapolis.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408-2837.

Rita I. Fair,
Managing Director.
[FR Doc. 96-23256 Filed 9-6-96; 2:50 am]
BILLING CODE 6725-01-P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF State Plan	54	1	60	3,240

Estimated Total Annual Burden Hours: 3,240.

Additional Information: ACF is requesting that OMB grant a 90 day approval for this information collection under procedures for emergency processing by September 9, 1996. A copy of this information collection, with applicable supporting documentation,

may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Larry Guerrero at (202) 401-6465.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Best Freight Forwarding Company, 2409 Steed Court, Lomita, CA 90717, Richard D. Kim, Sole Proprietor
FNS, Inc., 363 West Victoria Street, Gardena, CA 90248, Officer: Hyung Joon Ahn, President.

Dated: September 4, 1996.
Joseph C. Polking,
Secretary.
[FR Doc. 96-23022 Filed 9-9-96; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: State Plan for the Temporary Assistance for Needy Families (TANF).

OMB No.: New.

Description: This document consists of an outline of how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Executive Officer. Its submittal triggers the State's family assistance grant funding, and it is used to provide the public with information about the program.

Respondents: State Government.

of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, (202) 395-7316.

Dated: September 5, 1996.
Larry Guerrero,
Report Clearance Officer.
[FR Doc. 96-23068 Filed 9-9-96; 8:45 am]
BILLING CODE 4184-01-M

Food and Drug Administration

[Docket No. 96N-0222]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by October 10, 1996.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm. 10235, 725 17th St. NW., Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information

Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B-19, Rockville, MD 20857, 301-827-1686.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance: §§ 70.25 *Labeling requirements for color additives (other than hair dyes)* (21 CFR 70.25) and 71.1 *Petitions* (21 CFR 71.1) (OMB Control Number 0910-0185—Reinstatement).

Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or unless the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Color additive petitions are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color

additive that is approved already. Section 71.1 specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use.

FDA scientific personnel review color additive petitions to ensure that the intended use of the color additive in or on food, drugs, cosmetics, and medical devices is suitable and safe. Color additive petitions were specifically provided for by Congress when it enacted the Color Additive Amendments of 1960 (Pub. L. 94-295). If FDA stopped accepting color additive petitions or stopped requiring them to contain the information specified in § 71.1, the number of new color additives approved would decrease.

FDA's color additive labeling requirements in § 70.25 require that color additives that are to be used in foods, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

FDA estimates the burden of complying with the information collection provisions of the agency's color additive regulations as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
70.25	2	1	2			
71.1	2	1	2	1,700	3,415	\$6,000
Total	2				3,415	\$6,000

There are no capital costs associated with this collection.

This estimate is based on the number of new color additive petitions received in 1994. Although the burden varies with the type of petition submitted, a color additive petition involves analytical work and appropriate toxicology studies, as well as the work of drafting the petition itself. Because labeling requirements under § 70.25 for a particular color additive involve information required as part of the color additive petition safety review process, the estimate for number respondents is the same for § 70.25 as for § 71.1, and the burden hours for labeling are included in the estimate for § 71.1.

Dated: September 3, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96-23098 Filed 9-9-96; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Alternative Medicine Program Advisory Council; Notice of Meeting

Pursuant to sec. 10(d) of the Federal Advisory Committee Act (FACA), as amended (Title 5, U.S.C. Appendix 2), notice is hereby given of the meeting of the Alternative Medicine Program Advisory Council on September 16, 1996 from 8:30 am to 5 pm and on September 17 from 8:30 am to 1 pm in the Versailles II Room of the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to the public. The purpose of the meeting will be to update the Council on the progress of the Office of Alternative Medicine and obtain Council's advice on strategic planning for complementary and alternative medicine research. There will also be a scientific presentation, "Shifting Paradigms in Growth Factor/Cytokine Biotechnology: The Science,

the Paradigm, the Interface," by Barbara Brewitt, M.Div., Ph.D., Chief Scientist, Biomed Comm, Inc. and Leana Standish, N.D., Ph.D., Research Director, CAM Research Center, Bastyr University. Attendance by the public will be limited to space available.

Ms. Elizabeth Clay, Committee Management Officer, Office of Alternative Medicine, NIH, 9000 Rockville Pike, Building 31, Room 5B37, MSC 2182 Bethesda, MD 20892, phone (301) 594-1990, fax (301) 402-4741, E-Mail: bethclay@helix.nih.gov, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location no later than September 11, 1996.

This notice is being published less than 15 days prior to the meeting due

to the urgent need to proceed with the meeting as scheduled in order to address these issues in a timely manner.

Dated: August 30, 1996.

Margery G. Grubb,

*Senior Committee Management Specialist,
NIH.*

[FR Doc. 96-22996 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

Genetic Testing Task Force; Notice of Meeting

Notice is hereby given of the fourth meeting of the Task Force on Genetic Testing of the National Institutes of Health-Department of Energy Joint Working Group on the Ethical, Legal, and Social Implications of Human Genome Research (ELSI Working Group) on Tuesday, September 24, 1996, 1:00 pm to recess; Wednesday, September 25, 1996, 7:30 am to adjournment, at the Clarion Hotel at Mount Vernon Square, 612 Cathedral Street, Baltimore, Maryland, (410) 727-7101.

CONTACT PERSON: Neil Holtzman, M.D., M.P.H., Genetics and Public Policy Studies, The Johns Hopkins Medical Institutions, 550 North Broadway, Suite 511, Baltimore, Maryland 21205, (410) 955-7894.

The Task Force has developed Interim Principles primarily regarding scientific validation of new tests; laboratory quality; and education, counseling, and delivery. At this meeting, the Task Force will continue its consideration of recommendations to implement the Interim Principles, as well as revisions to the Interim Principles. The Interim Principles are available on the World Wide Web at: <http://infonet.welch.jhu.edu/policy/genetics/>

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Holtzman in advance of the meeting.

Dated: September 4, 1996.

Margery G. Grubb,

*Senior Committee Management Specialist,
NIH.*

[FR Doc. 96-23012 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

Notice of Meeting

Notice is hereby given of the open, public hearing of the National Institutes of Health-Department of Energy Joint Working Group on the Ethical, Legal, and Social Implications of Human Genome Research (ELSI Working Group) Evaluation Committee, on Wednesday, October 23, 1996, 9:00 am to noon at

Hotel Sofitel Chicago, 5550 N. River Road, Rosemont, Illinois 60018-5194; TEL: (847) 678-4488.

Contact Person: Bettie Graham, Ph.D., NIH/NCHGR Bldg. 38A, Rm. 614, Bethesda, MD 20892; (301) 496-7531.

The ELSI Working Group Evaluation Committee has been charged with evaluation of the ELSO activities and role of external advisors in the ELSO program. The Committee will assess how, in the near term, it would be best to structure input on ELSI issues raised by and as a consequence of the Human Genome Project. The Committee will also assess how, in the longer term, it would be best to structure input on ELSI issues raised more generally by research involving human genetics. The Committee is seeking public comments on the following questions:

1. What role should external advisors (currently the ELSI Working Group) play in the ELSI program?
2. How should the external ELSI advisors relate to other government and private groups studying these issues?
3. How should the external ELSI advisors relate to other institutes, programs, and entities at the National Institutes of Health (NIH) and Department of Energy (DOE) with a shared research interest?
4. To whom at the NIH and the DOE should the external advisors report?
5. What procedures should be established for appointment of members, priority setting, budget, staffing, and policy development?
6. What changes, if any, will be necessary in the ELSI program as the focus of research shifts away from genomics?

Individuals or representatives of organizations wishing to make an oral presentation, of no more than five minutes, to the ELSI Working Group Evaluation Committee, on Wednesday, October 23, should submit their name, affiliation, address, telephone number, and summary of their remarks to Dr. Graham at the above address by October 14. Those making oral comments to the Committee will be accommodated to the extent possible during the time allotted for oral public comments. Written comments will be accepted up to October 14.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Graham two weeks in advance of the meeting.

Individuals who are unable to attend the public meeting, but who would like to submit comments may do so by

writing to Mark A. Rothstein, Co-Chair, ELSI Working Group Evaluation Committee, Health Law and Policy Institute, University of Houston, Houston, TX 77204-6381 or to the Committee by e-mail at: elsiwg@net.bio.net.

Dated: September 4, 1996.

Margery G. Grubb,

*Senior Committee Management Specialist,
NIH.*

[FR Doc. 96-23008 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

Notice of Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), this notice is hereby given to announce an open meeting of the National Bioethics Advisory Commission (NBAC). The purpose of the meeting is to address: (i) the protections of the rights and welfare of human research subjects and (ii) the management and use of genetic information.

DATES: October 4, 1996, 8:30 a.m.-4:30 p.m.

PLACE: Conference Room 10, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975, October 3, 1995. The purpose of the NBAC is to provide advice and make recommendations to the National Science and Technology Council, and other appropriate entities on bioethical issues arising from research on human biology and behavior and the applications, including the clinical applications, of that research.

Tentative Agenda

Friday, October 4, 1995

- 8:30 a.m. Call to order, opening remarks, and introductions
- 8:45 a.m. Presentations by spokespersons for members of the U.S. Senate and U.S. House of Representatives and discussion with and among NBAC members
- 10:30 a.m. Break
- 10:50 a.m. Morning presentations and discussions continue
- 11:45 a.m. Lunch
- 1:00 p.m. Presentations by Administration spokespersons and discussion with and among NBAC members

2:30 p.m. Break
 2:50 p.m. Afternoon presentations and discussions continue
 3:20 p.m. Public comment
 4:20 p.m. NBAC members and staff discussion
 4:30 p.m. Adjourn

Public Participation

The meeting is open to the public with attendance limited to space available. Members of the public who wish to make oral statements should contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations by persons requesting an opportunity to speak. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations should also contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Persons who wish to file written statements with NBAC may do so at any time.

FOR FURTHER INFORMATION CONTACT:

Patricia Norris, Communications Director, National Bioethics Advisory Commission, MSC-7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892-7508, telephone 301-402-4242, fax nos. 301-480-6900 or 301-402-2071.

Dated: September 3, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-23006 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Prevention Program Working Group, September 17, 1996 at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

The meeting will be open to the public on September 17, 1996 from 8:00 a.m. to 8:30 a.m. for general introductory remarks and announcements relating to the Institute's Prevention Programs.

The meeting will be closed to the public on September 17, 1996 from 8:30 a.m. to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the NCI Prevention

Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Jack Gruber, Executive Secretary, National Cancer Institute Prevention Program Working Group, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 540, Bethesda, MD 20892, (301-496-9740). Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. Jack Gruber in advance of the meeting.

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-23000 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Clinical Trials Working Group, September 16-17, 1996 at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

This meeting will be open to the public on September 16, 1996 from 8:00 am to 8:30 am for introductory remarks and discussion of the Institutes Clinical Trails Extramural Program and September 17, 1996 from 8:00 am to 2:00 pm to discuss priority setting in clinical trials.

The meeting will be closed to the public on September 16, 1996 from 8:30 am to recess and on September 17, 1996 from 2:00 pm to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the Clinical Trials Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. John Cole, III, Executive Secretary, National Cancer Institute Clinical Trials Working Group, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 540, Bethesda, MD 20892, (301-496-1718). Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. John Cole, III in advance of the meeting.

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-23003 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the President's Cancer Panel.

This meeting will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below.

This meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(9), Title 5, U.S.C. for discussion of future meetings and preparation of the annual report to the President. These discussions could disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed action the Panel may plan to take.

Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630M, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892-7405 (301/496-5708) will provide a summary of the meeting and the roster of committee members upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Committee Name: President's Cancer Panel.

Dated: September 23-24, 1996.

Place: Henry B. Gonzalez Convention Center, 200 East Market, San Antonio, TX 78205.

Closed: September 23, 1996-7:00 p.m. to 9:00 p.m.

Agenda: Planning session to discuss future meetings and preparation of the mandatory annual report of the Chairman to the President.

Open: September 24, 1996–8:30 a.m. to 5:00 p.m.

Agenda: Managed Care's Role in the War on Cancer: Issues of Access in Today's Health Care System.

Contact Person: Dr. Maureen O. Wilson, Executive Secretary, National Cancer Institute, Building 31, Room 4A48, Bethesda, MD 20892, 301/496-1148.

This notice is being published less than 15 days prior to the meeting due to the urgent need to proceed with the meeting as scheduled to address these issues in a timely manner.

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH Committee Management Officer, NIH.

[FR Doc. 96-23009 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: NCCR Minority Initiative; K-12 Teachers and High School Students.

Date: September 26–27, 1996.

Time: 8:30 a.m.

Place: Bethesda Holiday Inn, Connecticut Room, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 652-2000.

Contact Person: Dr. John Lymangover, Dr. Sharon Moss, Scientific Review Administrators, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892-7965, (301) 435-0820.

Purpose/Agenda: To evaluate and review grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.389, Research Centers in Minority Institutions, National Institutes of Health, HHS)

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-22999 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Dates of Meeting: October 15, 1996.

Time: 8:00 a.m.—until adjournment.

Place of Meeting: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814, Tel: (301) 654-1000.

Scientific Review Administrator: Dr. Jill Carrington, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892-7965, Telephone: (301) 435-0822.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.167 Research Facilities Improvement Program, National Institutes of Health, HHS)

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-23014 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Review of Clinical Centers for Lung Volume Reduction Surgery for Emphysema: A Multi-center Assessment and Prospective Patient Registry.

Date: September 24–25, 1996.

Time: 7:00 p.m.

Place: Woodfin Suites, 1380 Piccard Drive, Rockville, Maryland 20850.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892-7924, (301) 435-0288.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Review of Clinical Coordinating Center for Lung Volume Reduction Surgery for Emphysema: A Multi-

center Assessment and Prospective Patient Registry.

Date: September 26, 1996.

Time: 7:00 a.m.

Place: Woodfin Suites, 1380 Piccard Drive, Rockville, Maryland 20850.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892-7924, (301) 435-0288.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Review of the Institutional National Research Service Awards (T32s), the Independent Scientist Awards (K02s) and the Mentored Clinical Scientist Development Awards (KO8s).

Date: October 21–22, 1996.

Time: 8:00 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892-7924, (301) 435-0288.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, HHS.

[FR Doc. 96-22997 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Tuberculosis/AIDS.

Dates of Meeting: September 25, 1996.

Time of Meeting: 8:00 a.m.

Place of Meeting: Prospect Associates, 1801 Rockville Pike, Rockville, Maryland.

Agenda: Status of Tuberculosis and AIDS as it Relates to the Lung. Discussion of Future

Initiatives with Emphasis on Basic Mechanisms and Utilization of Animal Models.

Contact Person: Hannah H. Peavy, M.D., NHLBI/DLD, Two Rockledge Center, 6701 Rockledge Drive, Rm. 10018, MSC 7952, Bethesda, Maryland 20892, (301) 435-0222.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle. (Catalog of Federal domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 3, 1996.

Margery G. Grubb,

Senior NIH Committee Management Specialist.

[FR Doc. 96-23007 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel on the Role of Infectious Agents in Atherosclerosis and Restenosis, September 19, 1996, 8:00 a.m., which was published in the Federal Register on August 15, 1996 (61 FR 24230).

The meeting was to have been held at the National Institutes of Health, Building 31, Room 5A16, Bethesda, Maryland, but has been changed to the Ramada Inn Rockville, 1775 Rockville Pike, Rockville, Maryland. As previously advertised, the meeting is open to the public.

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-23010 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Heart, Lung, and Blood Institute Special Emphasis Panel on Bone Marrow Transplantation in Sickle Cell Anemia, September 24, 1996, which was published in the Federal Register on August 16, 1996 (61 FR 42638).

The meeting is cancelled due to scheduling conflicts, and will be rescheduled at a later date.

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-23015 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Pediatric AIDS Clinical Trails.

Date: September 30—October 3, 1996.

Time: 7:00 p.m.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, DC 20007, (202) 338-4600.

Contact Person: Dr. Peter Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892-7610, (301) 496-8426.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-22998 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on October 10, 1996, at the Holiday Inn Gaithersburg, Walker Room, 2 Montgomery Village Avenue, Gaithersburg, Maryland.

The meeting will be open to the public from 8 a.m. to 9 a.m. on October

10, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until adjournment. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland, 301-496-7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Gary Madonna, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, Room 4C21, Rockville, Maryland 20892, telephone 301-496-3528, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-23001 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Institute of Mental Health, which was published in the Federal Register on August 15, 1996 (61 FR 42430).

This committee was to have convened at 8:30 a.m. on September 19 in Room 1B07, Building 36, National Institute of Health in Bethesda, MD. The starting date has been changed to September 18.

Dated: August 30, 1996.
Susan K. Feldman,
Committee Management Officer, NIH
[FR Doc. 96-23002 Filed 9-9-96; 8:45 am]
BILLING CODE 4140-01-M

National Institute on Aging; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, National Institute on Aging, September 10, 1996, Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland which was published in the Federal Register on August 23, (61 FR 43557).

This committee was to have convened at 1:00 p.m. on September 10, but has been changed to 12:00 p.m. on September 9. The location remains the same.

As previously announced, this meeting is closed to the public.

Dated: September 4, 1996.
Margery G. Grubb,
Senior NIH Committee Management Specialist
[FR Doc. 96-23011 Filed 9-9-96; 8:45 am]
BILLING CODE 4140-01-M

National Library of Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting:

Name of SEP: National Library of Medicine Special Emphasis Panel.

Date: September 10, 1996.

Time: 8:30 a.m.

Place: National Library of Medicine Board Room, 8600 Rockville Pike, Building 38, Bethesda, Maryland.

Contact: Dr. Roger W. Dahlen, Chief, Biomedical Information Support Branch, EP, 8600 Rockville Pike, Building 38A, Rm. 5S-522, Bethesda, Maryland 20894, 301/496-4221.

Purpose/Agenda: To evaluate and review training grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93-879—Medical Library Assistance, National Institutes of Health)

Dated: August 30, 1996.

Margery G. Grubb,
Senior NIH Committee Management Specialist
[FR Doc. 96-22994 Filed 9-9-96; 8:45 am]
BILLING CODE 4140-01-M

National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 10-11, 1996, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on October 10 and from 9:00 a.m. to approximately 12 noon on October 11 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jackie Duley at (301) 435-3138 in advance of the meeting.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on October 10, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Harold M. Schoolman, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496-4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: August 30, 1996.
Susan K. Feldman,
Committee Management Officer, NIH
[FR Doc. 96-23004 Filed 9-9-96; 8:45 am]
BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: September 4, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4202, Telephone Conference.

Contact Person: Dr. Gene Zimmerman, Scientific Review Administrator, 6701, Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435-1220.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.893, National Institutes of Health, HHS)

Dated: August 30, 1996.

Margery Grubb,
Senior Committee Management Specialist, NIH
[FR Doc. 96-22995 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: October 2-4, 1996.

Time: 8:00 a.m.

Place: Residence Inn, Bethesda, MD.

Contact Person: Dr. Jules Selden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4108, Bethesda, Maryland 20892, (301) 435-1785.

Name of SEP: Clinical Sciences.

Date: October 16-18, 1996.

Time: 8:00 a.m.

Place: Residence Inn, Bethesda, MD.

Contact Person: Dr. Jules Selden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4108, Bethesda, Maryland 20892, (301) 435-1785.

Name of SEP: Biological and Physiological Sciences.

Date: October 20-22, 1996.

Time: 7:00 a.m.

Place: San Francisco Marriott Hotel, San Francisco, CA.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435-1222.

Name of SEP: Chemistry and Related Sciences.

Date: October 23, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, Maryland 20892, (301) 435-1165.

Name of SEP: Multidisciplinary Sciences.

Date: October 28-30, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435-1174.

Name of SEP: Biological and Physiological Sciences.

Date: October 30, 1996.

Time: 3:30 p.m.

Place: NIH, Rockledge 2, Room 4124, Telephone Conference.

Contact Person: Dr. Mushtaq A. Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, Maryland 20892, (301) 435-1778.

Name of SEP: Chemistry and Related Sciences.

Date: October 31-November 1, 1996.

Time: 8:30 a.m.

Place: State Plaza Hotel, Washington, DC.

Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892 (301) 435-1180.

Name of SEP: Biological and Physiological Sciences.

Date: November 4-6, 1996.

Time: 7:30 a.m.

Place: Bethesda Marriott Hotel, Bethesda, MD.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435-1222.

Name of SEP: Chemistry and Related Sciences.

Date: November 7-8, 1996.

Time: 9:00 a.m.

Place: Holiday Inn, Silver Spring, MD.

Contact Person: Dr. Mike Radtke, Scientific Review Administrator, 6701 Rockledge Drive, Room 4176, Bethesda, Maryland 20892, (301) 435-1728.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade

secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-23005 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: to review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: October 14, 1996.

Time: 6:00 p.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Mushtaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, Maryland 20892, (301) 435-1778.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 4, 1996.

Margery Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-23013 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: October 14, 1996.

Time: 6:00 p.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 4120, Bethesda, Maryland 20892, (301) 435-1780.

Name of SEP: Chemistry and Related Sciences.

Date: October 23-25, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Nancy Lamontagne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4170, Bethesda, Maryland 20892, (301) 435-1726.

Name of SEP: Biological and Physiological Sciences.

Date: November 7-8, 1996.

Time: 8:30 a.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, Maryland 20892, (301) 435-1043.

Name of SEP: Multidisciplinary Sciences.

Date: November 18-19, 1996.

Time: 8:30 a.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Nadarajan Vydellingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435-1176.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 4, 1996.

Margery Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96-23016 Filed 9-9-96; 8:45 am]

BILLING CODE 4140-01-M

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in September.

A summary of the meeting 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 the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Panel: Pilot Studies of State Performance and Outcome Measurement for Substance Abuse Treatment.

Meeting Date: September 16-19, 1996.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: September 16-18, 1996—9:00 a.m.—5:00 p.m.; September 19, 1996—9:00 a.m.—Adjournment

Contact: Constance M. Burtoff, M.A., Room 17-89, Parklawn Building, Telephone: (301)443-2437 and FAX: (301)443-3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: September 5, 1996.

Jeri Lipov,

Committee Management Officer, SAMHSA.
[FR Doc. 96-23097 Filed 9-9-96; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Modoc Tribe of Oklahoma Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161, as interpreted by the U.S. Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983). I certify that Resolution No. 95-22, the Modoc Tribe of Oklahoma Liquor Control Ordinance, was duly adopted by the Elected Council of the Modoc Tribe of Oklahoma on September 7, 1995. The Ordinance provides for the regulation and control of the possession and sale of liquor on Modoc Tribe trust lands.

DATES: This Ordinance is effective as of September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street, NW, MS 4641-MIB, Washington, D.C., 20240-4001; telephone (202) 208 - 4400.

SUPPLEMENTARY INFORMATION: The Modoc Tribe of Oklahoma Liquor Control Ordinance is to read as follows:

Liquor Control Ordinance of the Modoc Tribe of Oklahoma

Chapter I—Introduction

Section 101. Title. This ordinance shall be known as the "Modoc Tribe Liquor Ordinance."

Section 102. Authority. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. Section 1161, and by the authority of the Modoc Tribe Elected Council.

Section 103. Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Modoc Tribe Trust Land. The enactment of a tribal ordinance governing liquor possession and sale will increase the ability of the Tribal government to control the sale, distribution, and possession of liquor on the Modoc Tribe Trust Lands, and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 104. Effective Date. This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the Federal Register.

Article 1. Declaration of Public Policy and Purpose

(a) The introduction, possession, and sale of liquor on the Modoc Tribe Trust Land is a matter of special concern to the Modoc Tribe.

(b) Federal law currently prohibits the introduction of liquor into Indian

Country (18 U.S.C. Section 1154), except as provided therein and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted, 18 U.S.C. Section 1161.

(c) The Modoc Tribe Elected Council finds that a complete ban on liquor within the Modoc Tribe Trust Land is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within the Modoc Tribe Trust Land, because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Modoc Tribe Elected Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Modoc Tribe Trust Land.

(d) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales on the tribal lands and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Modoc Tribe Trust Land. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at tribally-owned enterprises and/or tribally-licensed establishments operating on land leased from or otherwise owned by the Tribe.

Article II. Definitions

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) "Alcoholic Beverage" is synonymous with the term "liquor" as defined in Article 11 (f) of this Chapter.

(c) "Bar" means any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) "Elected Council" means the Modoc Tribe Elected Council.

(f) "Liquor" includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.

(g) "Liquor Store" means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to the sale of liquor or beer.

(h) "Malt Liquor" means beer, strong beer, ale, stout and porter.

(i) "Package" means any container or receptacle used for holding liquor.

(j) "Public Place" includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

(k) "Sale" and "Sell" include exchange, barter and traffic; and also includes the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(l) "Spirits" means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(m) "Wine" means any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk, or other products containing sugar, whether or not other ingredients are added, to which any

saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

(n) "Modoc Tribe Council" means the general council of the Modoc Tribe which is composed of the voting membership of the Tribe.

(o) "Modoc Tribe Trust Land" means those lands which are held in trust by the United States for the Modoc Tribe and not for any individual Indian.

Article III. Powers of Enforcement

Section 1. The Elected Council. In furtherance of this ordinance, the Elected Council shall have the following powers and duties:

(a) To publish and enforce rules and regulations adopted by the Elected Council governing the sale, manufacture, distribution, and possession of alcoholic beverages on the Modoc Tribe Trust Land;

(b) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Elected Council to perform its functions. Such employees shall be tribal employees;

(c) To issue licenses permitting the sale or manufacture or distribution of liquor on Modoc Tribe Trust Land;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this ordinance as necessary;

(f) To determine and seek damages for violations of the ordinance;

(g) To make such reports as may be required by the Modoc Tribe Council;

(h) To collect taxes and fees levied or set by the Elected Council and to keep accurate records, books, and accounts.

Section 2. Limitations on Powers. In the exercise of its powers and duties under this ordinance, the Elected Council and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the immunity of the Modoc Tribe from suit without the express consent of the Elected Council.

Section 3. Inspection Rights. The premises on which liquor is sold or distributed shall be open for inspection by the Elected Council at all reasonable times for the purpose of ascertaining whether the rules and regulations of the Elected Council and this ordinance are being complied with.

Article IV. Sales of Liquor

Section 1. License Required. Sales of liquor and alcoholic beverages within the exterior boundaries at Modoc Tribe Trust Land may only be made at businesses which hold a Modoc Tribe Liquor License.

Section 2. Sales for Cash. All liquor sales within the Modoc Tribe Trust Land boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with the use of credit cards such as Visa, MasterCard, American Express, etc.

Section 3. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Modoc Tribe Trust Land is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Modoc Tribe Trust Land and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subject to paying damages to the Modoc Tribe as set forth herein.

Article V. Licensing

Section 1. Procedure. In order to control the proliferation of establishments on the Modoc Tribe Trust Land which sell or serve liquor by the bottle or by the drink, all persons or entities which desire to sell liquor within the exterior boundaries of the Modoc Tribe Trust Land must apply to the Modoc Tribe for a license to sell or serve liquor.

Section 2. Application. Any person or entity applying for a license to sell or serve liquor on the Modoc Tribe Trust Land must fill in the application provided for this purpose by the Modoc Tribe and pay such application fee as may be set from time to time by the Elected Council for this purpose. Said application must be filled out completely in order to be considered.

Section 3. Issuance of License. The Elected Council may issue a license if it believes that such issuance is in the best interests of the Modoc Tribe and its members.

Section 4. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5. Renewal of License. A licensee may renew its license if the licensee has complied in full with this ordinance provided however, that the Elected Council may refuse to renew a license if it finds that doing so would

not be in the best interests of the health and safety of the Modoc Tribe.

Section 6. Revocation of License. The Elected Council may revoke a license for reasonable cause upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 7. Transferability of License. A license issued by the Elected Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI. Taxes

Section 1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of liquor or alcoholic beverage on the Modoc Tribe Trust Land in the amount of three percent (3%) of the retail sales price. All taxes from the sale of liquor and alcoholic beverages on the Modoc Tribe Trust Land shall be paid over to the General Treasury of the Modoc Tribe.

Section 2. Taxes Due. All taxes for the sale of liquor and alcoholic beverages on the Modoc Tribe Trust Land are due on the 15th day of the following month.

Section 3. Delinquent Taxes. Past due taxes shall accrue interest at 2% per month.

Section 4. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit a monthly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

Section 5. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of liquor and alcoholic beverages on the Modoc Tribe Trust Land. Said review or audit may be done periodically by the Tribe through its agents or employees whenever, in the opinion of the Elected Council, such a review or audit is necessary to verify the accuracy of reports.

Article VII. Rules, Regulations, and Enforcement

Section 1. In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner, liquor in violation of this ordinance, or who shall operate or shall have liquor for sale in his possession without a license, shall be guilty of a violation of this ordinance

subjecting him or her to civil damages assessed by the Elected Council.

Section 3. Any person within the boundaries of the Modoc Tribe Trust Land who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

Section 4. Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.

Section 5. Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this ordinance.

Section 6. Any person engaging wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this ordinance.

Section 7. No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

Section 8. Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each such sale or drink provided.

Section 9. Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the under age person shall be a requirement of finding a violation of this ordinance.

Section 10. Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

Section 11. Any person guilty of a violation of this ordinance shall be liable to pay the Modoc Tribe the amount of \$1,000 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance.

Section 12. When requested by the provider of liquor, any person shall be required to present official documentation of the bearers age, signature and photograph. Official documentation includes one of the following:

(1) Drivers license or identification card issued by any state department of motor vehicles;

(2) United States Active Duty Military;

(3) Passport

Section 13. Liquor which is possessed, including for sale, contrary to the terms of this ordinance is declared to be contraband. Any tribal agent, employee or officer who is authorized by the Elected Council to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property.

Section 14. Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Modoc Tribe.

Article VIII. Abatement

Section 1. Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

Section 2. The Chief of the Elected Council or, if the Chief fails or refuses to do so, by a majority vote, the Elected Council shall institute and maintain an action in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this article. In addition to all other remedies at tribal law, the Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum not less than \$25,000 payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other applicable tribal law and that he will pay all fines, costs and damages assessed against him for any violation of this ordinance or other tribal liquor laws. If any conditions of the bond be

violated, the bond may be recovered for the use of the Tribe.

Section 3. In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article IX. Revenue

Section 1. Revenue provided for under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Elected Council for essential governmental and social services.

Article X. Severability and Effective Date

Section 1. If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

Section 2. This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the Federal Register.

Section 3. Any and all prior enactments of the Elected Council which are inconsistent with the provisions of this ordinance are hereby rescinded.

Article XI. Amendment

This ordinance may only be amended by a majority vote of the Elected Council.

Dated: September 3, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-23042 Filed 9-9-96; 8:45 am]

BILLING CODE 4310-02-P

Seneca-Cayuga Tribe of Oklahoma Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the

Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983). I certify that by Resolutions numbered 09-073196 and 14-120595, Liquor Control Ordinance, were duly adopted by the Seneca-Cayuga Tribe of Oklahoma on July 31, 1996. The Ordinances regulate the control of, the possession of, and the sale of liquor on Seneca-Cayuga trust lands, and is in conformity with the laws of Oklahoma.

DATES: This Ordinance is effective as of September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street N.W., MS 4603-MIB, Washington, D.C. 20240-4001; telephone (202) 208-3463.

SUPPLEMENTARY INFORMATION: The Seneca-Cayuga Tribe of Oklahoma Liquor Control Ordinance, Resolutions numbered 09-073196 and 14-120595, is to read as follows:

Liquor Control Ordinance of The Seneca-Cayuga Tribe of Oklahoma

Chapter I—Introduction

Section 101. Title. This ordinance shall be known as the “Seneca-Cayuga Tribal Liquor Control Ordinance.”

Section 102. Authority. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. Section 1161, and by the authority of the Seneca-Cayuga Tribal Business Committee.

Section 103. Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Seneca-Cayuga Trust Land. The enactment of a tribal ordinance governing liquor possession and sale on the Seneca-Cayuga Trust Land will increase the ability of the tribal government to control the sale, distribution and possession of liquor on Seneca-Cayuga Trust Land and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 104. Effective Date. This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the Federal Register.

Article 1. Declaration of Public Policy and Purpose

(a) The introduction, possession, and sale of liquor on the Seneca-Cayuga Trust Land is a matter of special concern to the Seneca-Cayuga Tribe.

(b) Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. Section 1154),

except as provided therein and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted. (18 U.S.C. Section 1161).

(c) The Seneca-Cayuga Council finds that a complete ban on liquor within the Seneca-Cayuga Trust Land is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within the Seneca-Cayuga Trust Land, because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Seneca-Cayuga Council finds that tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Seneca-Cayuga Trust Land.

(d) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales on the tribal lands and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Seneca-Cayuga Tribe Trust Land. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at tribally-owned enterprises and/or tribally licensed establishments operating on land leased from or otherwise owned by the Tribe.

Article 11. Definitions.

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) “Alcohol” means that substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) “Alcoholic Beverage” is synonymous with the term “liquor” as defined in Article II(f) of this Chapter.

(c) “Bar” means any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) “Beer” means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) "Business Committee" means the Seneca-Cayuga Business Committee.

(f) "Liquor" includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.

(g) "Liquor Store" means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to the sale of liquor or beer.

(h) "Malt Liquor" means beer, strong beer, ale, stout and porter.

(i) "Package" means any container or receptacle used for holding liquor.

(j) "Public Place" includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes: public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

(k) "Sale" and "Sell" includes exchange, barter and traffic; and also includes the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(l) "Spirits" means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(m) "Tax Commission" this term refers to the Seneca-Cayuga Tax Commission, created pursuant to the General Revenue and Taxation Act of 1985.

(n) "Wine" means any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk, or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

(o) "Seneca-Cayuga Council" means the general council of the Seneca-Cayuga Tribe of Oklahoma which is composed of the voting membership of the Tribe.

(p) "Seneca-Cayuga Trust Land" means those lands which are held in trust by the United States for the Seneca-Cayuga Tribe and not for any individual Indian.

Article III. Powers of Enforcement

Section 1. The Business Committee. In furtherance of this ordinance, the Business Committee shall have the following powers and duties:

(a) To publish and enforce rules and regulations adopted by the Business Committee governing the sale, manufacture, distribution, and possession of alcoholic beverages on the Seneca-Cayuga Trust Land;

(b) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Business Committee to perform its functions. Such employees shall be tribal employees;

(c) To authorize the Tax Commission to issue licenses permitting the sale or manufacture or distribution of liquor on the Seneca-Cayuga Trust Land and to revoke such licenses as provided herein;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this ordinance as necessary;

(f) To make such reports as may be required by the Seneca-Cayuga Council;

(g) To authorize the Tax Commission to collect taxes and fees levied or set by the Business Committee and to keep accurate records, books, and accounts;

(h) To determine and seek damages for violation of the ordinance.

Section 2. Limitations on Powers. In the exercise of its powers and duties under this ordinance, the Business Committee and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor

wholesaler, retailer, or distributor or from any licensee;

(b) Waive the immunity of the Seneca-Cayuga Tribe from suit without the express consent of the Business Committee.

Section 3. Inspection Rights. The premises on which liquor is sold or distributed shall be open for inspection by the Business Committee at all reasonable times for the purpose of ascertaining whether the rules and regulations of the Business Committee and this ordinance are being complied with.

Article IV. Sales of Liquor

Section 1. License Required. Sales of liquor and alcoholic beverages within the exterior boundaries of Seneca-Cayuga Trust Land may only be made at businesses which hold a Seneca-Cayuga Tribal Liquor License.

Section 2. Sales for Cash. All liquor sales within the Seneca-Cayuga Trust Land boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with the use of credit cards such as Visa, MasterCard, American Express, etc.

Section 3. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Seneca-Cayuga Trust Land is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Seneca-Cayuga Tribal Trust Land and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subject to paying damages to the Seneca-Cayuga Tribe as set forth herein.

Article V. Licensing

Section 1. Procedure. In order to control the proliferation of establishments on the Seneca-Cayuga Trust Land which sell or serve liquor by the bottle or by the drink, all persons or entities which desire to sell liquor within the exterior boundaries of the Seneca-Cayuga Trust Land must apply to the Seneca-Cayuga Tribe for a license to sell or serve liquor.

Section 2. Application. Any person or entity applying for a license to sell or serve liquor on the Seneca-Cayuga Trust Land must fill in the application provided for this purpose by the Seneca-Cayuga Tribe and pay such application fee as may be set from time to time by the Tax Commission or, in the absence thereof the Business Committee, for this

purpose. Said application must be filled out completely in order to be considered.

Section 3. Issuance of License. The Tax Commission or, in the absence thereof, the Business Committee may issue a license if it believes that such issuance is in the best interests of the Seneca-Cayuga Tribe and its members.

Section 4. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5. Renewal of License. A licensee may renew its license if the licensee has complied in full with this ordinance provided however, that the Tax Commission or in the absence thereof the Business Committee may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Seneca-Cayuga Tribe.

Section 6. Revocation of License. The Tax Commission or, in the absence thereof, the Business Committee may revoke a license for reasonable cause upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 7. Transferability of License. Licenses issued by the Tax Commission or, in the absence thereof, the Business Committee shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI. Taxes

Section 1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of liquor or alcoholic beverage on the Seneca-Cayuga Trust Land in the amount of one percent (1%) of the retail sales price. All taxes from the sale of liquor and alcoholic beverages on the Seneca-Cayuga Trust Land shall be paid over to the General Treasury of the Seneca-Cayuga Tribe.

Section 2. Taxes Due. All taxes for the sale of liquor and alcoholic beverages on the Seneca-Cayuga Trust Land are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due.

Section 3. Delinquent Taxes. Past due taxes shall accrue interest at 2% per month.

Section 4. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

Section 5. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its book and records relating to the sale of liquor

and alcoholic beverages on the Seneca-Cayuga Trust Land. Said review or audit may be done periodically by the Tribe through its agents or employees whenever, in the opinion of the Business Committee or Tax Commission, such a review or audit is necessary to verify the accuracy of reports.

Article VII. Rules, Regulations, and Enforcement

Section 1. In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner, liquor in violation of this ordinance, or who shall operate or shall have liquor for sale in his possession without a license, shall be guilty of a violation of this ordinance subjecting him or her to civil damages assessed by the Business Committee.

Section 3. Any person within the boundaries of the Seneca-Cayuga Trust Land who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

Section 4. Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.

Section 5. Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this ordinance.

Section 6. Any person engaging wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this ordinance.

Section 7. No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

Section 8. Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each such sale or drink provided.

Section 9. Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this ordinance.

Section 10. Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

Section 11. Any person guilty of a violation of this ordinance shall be liable to pay the Seneca-Cayuga Tribe the amount of \$500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance.

Section 12. When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(1) Driver's license or identification card issued by any state department of motor vehicles;

(2) United States Active Duty Military;

(3) Passport.

Section 13. Liquor which is possessed, including for sale, contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee or officer who is authorized by the Business Committee to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property.

Section 14. Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Seneca-Cayuga Tribe.

Article VII. Abatement

Section 1. Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept

in and used in maintaining such place, is hereby declared to be a nuisance.

Section 2. The Chairman of the Business Committee or, if the Chairman fails or refuses to do so, by a majority vote, the Business Committee shall institute and maintain an action in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this article. In addition to all other remedies at tribal law, the Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than \$25,000 payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this ordinance or of any other applicable tribal law and that he will pay all fines, costs and damages assessed against him for any violation of this ordinance or other tribal liquor laws. If any conditions of the bond be violated, the bond may be recovered for the use of the Tribe.

Section 3. In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article IX. Revenue

Revenue provided for under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Business Committee for essential governmental and social services.

Article X. Severability and Effective Date

Section 1. If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

Section 2. This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance

and publishes the same in the Federal Register.

Section 3. Any and all prior enactments of the Business Committee which are inconsistent with the provisions of this ordinance are hereby rescinded.

Article XI. Amendment

This ordinance may only be amended by a vote of the Business Committee.

Dated: September 3, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-23043 Filed 9-9-96; 8:45 am]

BILLING CODE 4310-02-P

Bureau of Land Management

[MT-020-1430-01; MTM 84992]

Public Land Order No. 7211; Jurisdictional Transfer of Public Lands; Montana

AGENCY: Bureau of Land Management.

ACTION: Public land order.

SUMMARY: This order transfers jurisdiction of 1,036.91 acres of public lands located within the boundaries of the Custer National Forest from the Bureau of Land Management to the Department of Agriculture, Forest Service. The lands were acquired by exchange.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2829.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Jurisdiction of the surface and mineral estates of following described public lands administered by the Bureau of Land Management is hereby transferred to the Department of Agriculture, Forest Service, for inclusion in the National Forest System:

Principal Meridian, Montana

a. Surface Estate (no minerals)

T. 6 S., R. 48 E.,

Sec. 32, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 33, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 160 acres.

b. Surface and Coal Estates

T. 7 S., R. 48 E.,

Sec. 4, HES #653;

Secs. 7, 8, and 17, HES #991 less 17.69 acres highway right-of-way conveyed by Deed recorded Book 27 Deeds page 363 public records Powder River County;

Sec. 9, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,

W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$,
N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
and NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 10, E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, and
N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Secs. 14 and 15, HES #996 less 4.73 acres highway right-of-way conveyed by Deed recorded Book 27 Deeds page 365 public records Powder River County;

Secs. 15 and 16, HES #986 less 17.92 acres highway right-of-way conveyed by Deed recorded Book 27 Deeds page 361 public records Powder River County.

The areas described aggregate 718.58 acres.

c. Surface and Mineral Estates

T. 7 S., R. 48 E.,

Secs. 14 and 23, HES #995;

The area described contains 158.33 acres. The total areas described aggregate 1,036.91 acres in Powder River County.

2. Subject to valid existing rights, the above described lands are hereby made a part of the Custer National Forest and shall hereafter be subject to all laws and regulations applicable thereto.

Dated: August 27, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96-22970 Filed 9-9-96; 8:45 am]

BILLING CODE 4310-DN-P

[OR-958-0777-54; GP6-0111; OR-19630 (WA), OR-19655 (WA)]

Public Land Order No. 7213; Revocation of Secretarial Orders Dated May 13, 1922, and November 20, 1928; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in their entirety two Secretarial orders which withdrew 4,518.57 acres of National Forest System land for use by the Bureau of Land Management in connection with Powersite Classification Nos. 35 and 209. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 796.97 acres to surface entry. The 3,721.60 acre balance remains closed to surface entry, mining, and mineral leasing by other overlapping withdrawals.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT:

Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-952-6155.

By virtue of the authority vested in the Secretary of the Interior by Section

204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated May 13, 1922, which withdrew the following described lands for Powersite Classification No. 35, is hereby revoked in its entirety:

Willamette Meridian

Mt. Baker National Forest

T. 32 N., R. 11 E.,
 Sec. 5, lots 2, 3, 4, 5, 7, and 8, NW $\frac{1}{4}$ SW $\frac{1}{4}$,
 and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 6, lot 1;
 Sec. 8, lots 1, 2, 3, 5, 7, 8, and 9, SE $\frac{1}{4}$ NE $\frac{1}{4}$,
 W $\frac{1}{2}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 9, lots 1 to 7, inclusive, and SW $\frac{1}{4}$
 NW $\frac{1}{4}$;
 Sec. 10, lot 1, S $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 11, lot 1, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 13, lots 1 to 8, inclusive, N $\frac{1}{2}$ NW $\frac{1}{4}$,
 SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 14, lots 1 to 9, inclusive, NE $\frac{1}{4}$ NE $\frac{1}{4}$,
 SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 15, lots 1 to 7, inclusive, and SE $\frac{1}{4}$
 NE $\frac{1}{4}$.

T. 32 N., R. 12 E.,
 Sec. 18, lots 3 and 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$
 SE $\frac{1}{4}$;
 Sec. 19, lots 1 to 8, inclusive;
 Sec. 20, lots 1 to 8, inclusive, N $\frac{1}{2}$ SW $\frac{1}{4}$,
 and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 21, lots 2 to 7, inclusive, and NW $\frac{1}{4}$
 SW $\frac{1}{4}$.

The areas described aggregate 3,660.40 acres in Snohomish County.

2. The Secretarial Order dated November 20, 1928, which withdrew the following described lands for Powersite Classification No. 209, is hereby revoked in its entirety:

Willamette Meridian

Snoqualmie National Forest

T. 24 N., R. 11 E.,
 Sec. 2, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 10, lots 1 to 7, inclusive, and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 14, lot 1, E $\frac{1}{2}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 28 N., R. 11 E.,
 Sec. 2, lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 12, lot 1, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$
 NW $\frac{1}{4}$.

The areas described aggregate 848.17 acres in King and Snohomish Counties.

3. At 8:30 a.m. on October 10, 1996, the following described lands will be open to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 10, 1996, shall be considered as simultaneously filed at that time:

Willamette Meridian

Mt. Baker National Forest

T. 32 N., R. 11 E.,

Sec. 5, those portions of lot 2 and the SE $\frac{1}{4}$
 SE $\frac{1}{4}$ lying outside the boundary of the
 Skagit Wild and Scenic River
 withdrawal;

Sec. 6, lot 1;

Sec. 8, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and those portions of
 lots 1 and 7 lying outside the boundary
 of the Skagit Wild and Scenic River
 withdrawal;

Sec. 9, those portions of lots 1 and 2, and
 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying outside the
 boundary of the Skagit Wild and Scenic
 River withdrawal;

Sec. 13, lot 1, NW $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 14, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and those portions of
 lots 5, 6, 7, and 9, and the N $\frac{1}{2}$ SW $\frac{1}{4}$
 lying outside the boundary of the Skagit
 Wild and Scenic River withdrawal;

T. 32 N., R. 12 E.,

Sec. 19, lots 4 to 8, inclusive;

Sec. 20, lot 5, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and
 those portions of lots 7 and 8 lying
 outside the boundary of the Skagit Wild
 and Scenic River withdrawal;

Sec. 21, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and those portions of
 lots 4, 5, 6, and 7 lying outside the
 boundary of the Skagit Wild and Scenic
 River withdrawal.

The areas described aggregate
 approximately 796.97 acres in Snohomish
 County.

4. The lands described in paragraph 2 are included in the Alpine Lakes and Henry M. Jackson Wilderness Area withdrawals and remain closed to surface entry, mining, and mineral leasing.

5. The lands described in paragraph 1, except as provided in paragraph 3, are included in the Skagit Wild and Scenic River withdrawal and will remain closed to surface entry.

Dated: August 27, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96-22969 Filed 9-9-96; 8:45 am]

BILLING CODE 4310-33-P

National Park Service

Canyonlands National Park, UT; Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award eighteen concession contracts authorizing continued operation of commercially guided, interpretive whitewater river tours and transportation services, for the public at Canyonlands National Park for a period of five (5) years from January 1, 1998 through December 31, 2002.

EFFECTIVE DATE: Offers will be accepted for ONE HUNDRED AND TWENTY (120) days under the terms described in the Prospectus. The one hundred and

twenty (120) day application period will begin with the release of the Prospectus, which will occur on or before October 10, 1996.

ADDRESSES: Interested parties should contact the Superintendent, Canyonlands National Park, 2282 South West Resource Blvd., Moab, Utah 84532, to obtain a copy of the Prospectus describing the requirements of the proposed contracts.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioners have performed their obligations to the satisfaction of the Secretary under existing permits which expire by limitation of time on December 31, 1997. Therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. § 20), the concessioner is entitled to be given preference in the renewal of the contract and in the award of a new contract providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all offers received as a result of this notice. Any offer, including that of the existing concessioner, must be received by the Superintendent, Canyonlands National Park, 2282 South West Resource Blvd., Moab, Utah 84532, not later than one hundred and twenty (120) days following release of the prospectus to be considered and evaluated.

Dated: August 6, 1996.

James T. Reynolds,

Superintendent, Colorado Plateau System Support Office.

[FR Doc. 96-22961 Filed 9-9-96; 8:45 am]

BILLING CODE 4310-70-M

Notice of Intention To Extend an Existing Concession Contract—North Cascades National Park

SUMMARY: Pursuant to the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20 *et seq.*), notice is hereby given that the National Park Service intends to extend the concession contract of Lake Chelan Recreation, Inc., at North Cascades National Park for a period of three years. The current concessioner has performed its obligation to the satisfaction of the Secretary and retains its right of preference in renewal pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20 *et seq.*) and 36 CFR 51.5, under this administrative action to extend the existing contract.

SUPPLEMENTARY INFORMATION: This extension is necessary to allow the continuation of public services and implementation of the General Management Plan for Lake Chelan National Recreation Area. The National Park Service will not renew the contract for an extended period. The park must have sufficient time to prepare necessary planning documents and obtain necessary funding for the required infrastructure (roads, power, water and sewer systems) and for the relocation and construction of new concession facilities. The concession contract at North Cascades National Park will expire on December 31, 1998. The park does not have sufficient time to complete the full design and funding packages in order to implement these General Management Plan requirements. This planning process will have a direct effect on the nature and character of future concession activities, as well as with the Stehekin Landing and visitor access, as it deals with complex issues associated with safety, visitor services, cultural and natural resources. The planning process may take as long as five years to complete. Until the planning process is completed, it will not be in the best interest of North Cascades National Park to enter into a long term concession contract. For these reasons, it is the intention of the National Park Service to extend the current contract for a period of three years. Information regarding this notice can be sought from: Chief, Division of Concession Management, North Cascades National Park, 2105 Highway 20 Sedro, Woolley, Washington 98284, or call: (360) 856-5700 Ext. 354. Attention: Ms. Margie D. Allen.

Dated: August 8, 1996.
Patricia L. Neubacher,
Acting Field Director, Pacific West Area.
[FR Doc. 96-22962 Filed 9-9-96; 8:45 am]
BILLING CODE 4310-70-P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 31, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by September 25, 1996.

Carol D. Shull,
Keeper of the National Register.

Alabama
Tuscaloosa County
Downtown Tuscaloosa Historic District (Boundary Increase II), 2500-2508, 2501-2519, 2516, 2521 7th St. and 2525 S. Lurleen Wallace Blvd., Tuscaloosa, 96001029

Arkansas
Carroll County
Mo-Ark Baptist Academy, S of western terminus of Park St., Blue Eye, 96001030

Greene County
Beisel-Mitchell House, 420 W. Court St., Paragould, 96001031

Florida
Dade County
Faust, Thomas, House (Homestead MPS) 69 N.W. 4th St., Homestead, 96001034

Lee County
Heitman, Gilmer, House (Lee County MPS) 2581 1st St., Fort Myers, 96001033

Georgia
Worth County
Sumner High School, 716 Walnut St., Sumner, 96001035

Maine
Cumberland County
Porteous, Mitchell and Braun Company Building, 522-528 Congress St., Portland, 96001039

Kennebec County
The Birches, Off E side of Foster Ln., .15 mi. S of jct. with ME 27, Belgrade Lakes, 96001036

Oxford County
Dreamhome, W side of Lake Christopher, .45 mi. N of Hill Rd., Bryant Pond vicinity, 96001037

Sagadahoc County
Harward Family House, W side of Pork Point Rd., .4 mi. S of jct. with ME 24, Richmond vicinity, 96001038

Massachusetts
Nantucket County
Diamond Historic District, Roughly bounded by Broad, Lewis, Ocean Sts., Swampscott Line, Lynn Shore Dr., and Wave and Nahant Sts., Lynn, 96001040

New Mexico
Dona Ana County
Dona Ana Village Historic District, Roughly bounded by the Dona Ana lateral irrigation ditch, I-25, NM 320, and Dona Ana School Rd., Dona Ana, 96001042

San Juan County
Aztec Ruins Administration Building-Museum, Approximately .75 mi. N of US 550, on outskirts of Aztec, Aztec Ruins National Monument, Aztec vicinity, 96001041

New York
Nassau County
Moore's Building, 1 E. Main St., Oyster Bay, 96001043

Oregon
Klamath County
Blackburn Sanitarium, 1842 Esplanade, Klamath Falls, 96001046

Lane County
Chambers, Fred E. House and Grounds (Architecture of Ellis F. Lawrence MPS), 1151 Irving Rd., Eugene vicinity, 96001047

Linn County
Chambers, Matthew C., Barn, .4 mi. N of jct. of Knox Butte Rd. and Scrael Hill Rd., Albany vicinity, 96001044

Maurer, Joseph and Barbar, House, 35168 Tennessee Rd., Lebanon vicinity, 96001045

Marion County
Bank of Woodburn, 199 N. Front St., Woodburn, 96001049

Victor Point School, 1175 Victor Point Rd., SE, Silverton vicinity, 96001050

Union County
Stange, August J., House, 1612 Walnut St., La Grande, 96001048

Virginia
King William County
West Point Historic District, Kirby, Main, and Lee Sts. from 1st through 13th Sts., West Point, 96001051

Lunenburg County
Jones Farm, VA 609, approximately .75 mi. N of jct. with VA 613, Kenbridge vicinity, 96001052

Wisconsin
Sauk County
Porter, Walworth D., Duplex Residence, 221-225 7th St., Baraboo, 96001053

[FR Doc. 96-23028 Filed 9-9-96; 8:45 am]
BILLING CODE 4310-70-P

DEPARTMENT OF LABOR**Office of the Secretary****Submission for OMB Review;
Comment Request**

September 3, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ({202} 219-5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219-4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of management and Budget, Room 10235, Washington, DC 20503 ({202} 395-7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- * 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;
- * evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- * enhance the quality, utility, and clarity of the information to be collected; and
- * minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Certificate of Medical Necessity.

OMB Number: 1215-0113.

Agency Number: CM-893.

Frequency: On occasion.

Affected Public: Business or other-for-profit; Not-for-profit institutions.

Number of Respondents: 7,000.

Estimated Time per Response: 40 minutes.

Total Burden Hours: 2,799.

Total Respondent Cost (capital/startup): 0.

Total Respondent Cost (operating and maintenance): 0.

Description: Form Cm-893, Certificate of Medical Necessity, is completed by the miner's doctor and is used by the Division of Coal Miners Workers' Compensation (DCMWC) to determine if the miner meets the specific impairment standard to qualify for durable medical equipment, home nursing care and/or pulmonary rehabilitation. Without the information provided, the DCMWC could not carry out its responsibility to determine eligibility for black lung medical benefits.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96-23051 Filed 9-9-96; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration**Proposed Information Collection
Request Submitted for Public
Comment and Recommendations;
Hearing Conservation Plans**

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondents' burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. § 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Hearing Conservation Plans for coal mines. MSHA is particularly interested in comments which:

- * 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;
- * Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who must respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the Addressee section of this notice.

DATES: Submit comments on or before November 12, 1996.

ADDRESSES: Written comments shall be mailed to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, U.S. Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203-1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235-1910 (voice) or (703) 235-5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203-1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235-8378 (voice) or (703) 235-1563 (facsimile).

SUPPLEMENTARY INFORMATION:**I. Background**

Section 206 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 846, requires the Secretary of Labor to promulgate mandatory health standards establishing maximum noise exposure levels for underground coal mines. The Secretary, through the Mine Safety and Health Administration (MSHA), promulgated a regulation governing permissible noise exposure levels which may be found at 30 CFR § 70.510. Additionally, 30 CFR Part 70, Subpart F and Part 71, Subpart I, require that periodic noise surveys be taken by each mine operator every three to six months. The surveys must be taken by a certified person, and they must be taken where each miner in the active workings of the mine is exposed during the performance of duties to which he is normally assigned. If a mine operator is found to have violated the

permissible noise exposure levels, the operator is required to submit to MSHA for approval a continuing, effective hearing conservation plan that includes provisions for (i) reducing environmental noise levels; (ii) personal ear protective devices to be made available to the miners; and (iii) preemployment and periodic audiograms.

II. Current Actions

MSHA seeks to continue the requirement that mine operators submit hearing conservation plans when they are found to be in violation of the noise standard to ensure that permissible noise exposure levels are not exceeded and that miners are afforded the proper protection to conserve their hearing.

Type of Review: Reinstatement.

Agency: Mine Safety and Health Administration.

Title: Hearing Conservation Plan.

OMB Number: 1219-0017.

Affected Public: Business or other for-profit.

Total Respondents: 3,236.

Frequency: On occasion.

Total Responses: 280.

Average Time per Response: 5.82 hours.

Estimated Total Burden Hours: 1,630 hours.

Estimated Total Burden Cost: \$242,354.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 30, 1996.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 96-23050 Filed 9-9-96; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96-108]

NASA Advisory Council, Life & Microgravity Sciences & Applications Advisory Committee, Life and Biomedical Sciences 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 & Microgravity Sciences & Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee.

DATES: September 25, 1996, 8:30 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., MIC 3 A & B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald White, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-2530.

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:

- Status: Office of Life & Microgravity Sciences and Applications, Life Sciences Division
- Program Management Changes
- International Approach to Science Recruitment, Review & Selection
- Status of Space Facility Development; Biological Research & Human Research
- General Discussion and Recommendations

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: September 3, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96-23076 Filed 9-9-96; 8:45 am]

BILLING CODE 7510-01-M

[Notice 96-109]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health 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, Aerospace Medicine and Occupational Health Advisory Subcommittee.

DATES: September 25, 1996, 9:15 a.m. to 5:00 p.m.

ADDRESSES: NASA Headquarters, Room MIC-7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sam L. Pool, code SD, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 713-483-7109.

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:

- Status of Negotiations with the Russians Concerning Medical Operations Support of the Space Station
- Discussion of Medical Certification Procedures for Russian Cosmonauts and Other International Participants on Space Station
- Review of Medical Operations Protocols
- Status and Discussion of Lead Center Role for Life Sciences
- Status and Discussion of Space Station Medical Operations Requirements Document
- Status and Discussion of Development of Medical Selection and Retention Criteria for all Space Station International Partners
- Discussion of the Progress Towards the Establishment of a National Space Biomedical Institute
- Review of Retention Rates for flight Surgeons
- Review of OLMSA Agencywide Strategic Planning for Telemedicine
- Presentation on the findings of the Occupational Health External Working Group
- Discussion of Action Items
- Summary of Findings and Recommendations

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: September 3, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96-23077 Filed 9-9-96; 8:45 am]

BILLING CODE 7510-01-M

[Notice 96-110]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; 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.

DATES: September 26, 1996, 8:00 a.m. to 7:00 p.m.; and September 27, 1996, 8:00 a.m. to 12:30 p.m.

ADDRESSES: NASA Headquarters, Room MIC 3A, 300 E Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Diana P. Hoyt, Code UP, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1893.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, September 26, 1996, from 5:15 p.m. to 7:00 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Status of the Office of Life and Microgravity Sciences and Applications
- Status of Space Station Utilization
- Radiation Program/Advanced Life Support and Extravehicular Activity
- Countermeasures Report
- Subcommittee/Task Force Reports
- Status of Longitudinal Health Studies
- Office of Space Science—Implication of Mars Meteorite Discovery
- Tutorial: Protein Crystal Growth
- Space Development and Commercialization
- Discussion of Committee Findings and Recommendations

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: September 3, 1996.

Leslie M. Nolan,
Advisory Committee Management Officer,
National Aeronautics and Space Administration.

[FR Doc. 96-23078 Filed 9-9-96; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 9, 16, 23, and 30, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 9

There are no meeting scheduled for the Week of September 9.

Week of September 16—Tentative

There are no meeting scheduled for the Week of September 16.

Week of September 23—Tentative

There are no meeting scheduled for the Week of September 23.

Week of September 30—Tentative

Thursday, October 3

1:00 p.m.

Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION:

Bill Hill (301) 415-1661.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary. Attn: Operations Branch, Washington, D.C. 20555 (301-415-1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

Dated: September 6, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96-23249 Filed 9-6-96; 2:09 pm]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for a Collection of Information Under the Paperwork Reduction Act; Qualified Domestic Relations Order Submitted to the PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget

approve a new collection of information under the Paperwork Reduction Act. The information collection relates to model forms contained in a PBGC booklet providing guidance on how to submit a proper qualified domestic relations order to the PBGC.

DATES: The PBGC has requested that OMB approve this request by September 10, 1996.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the OMB with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

The PBGC is a federal agency that insures the benefits of nearly 42 million working men and women in about 55,000 private-sector defined benefit pension plans. A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, the PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified

domestic relations order ("QDRO"). The PBGC reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee.

The PBGC receives many inquiries on the requirements for QDROs. Many domestic relations orders, both in draft and final form, do not meet the applicable requirements. The PBGC works with practitioners on a case-by-case basis to ensure that their orders are amended to meet applicable requirements. This process is time-consuming for practitioners and for the PBGC.

To simplify the process, the PBGC has included model QDROs and accompanying guidance in a booklet, "Divorce Orders & PBGC," that attorneys and other professionals who are preparing QDROs for plans trustee by the PBGC may submit to the PBGC after receiving court approval. These models and the guidance are intended to assist parties by making it easier to comply with ERISA's QDRO requirements in plans trustee by the PBGC.

The requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements and will result in a reduction of the statutory burden. The PBGC estimates that it will receive 333 QDROs each year from prospective alternate payees; that the average burden of preparing a QDRO with the assistance of the guidance and model QDROs in PBGC's booklet will be 1/4 hour of the alternate payee's time and \$400 in professional fees if the alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the alternate payee's time if the alternate payee prepares the QDRO without hiring an attorney or other professional; and that the total annual burden will be 156 hours and \$132,000.

The PBGC solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

The PBGC has requested that OMB approve this collection on an emergency basis by September 10, 1996 so that model QDROs can be made available to practitioners immediately. Early availability will greatly assist practitioners in preparing proper QDROs for the PBGC, thereby saving parties both time and expense.

Issued at Washington, DC, this 5th day of September 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96-23088 Filed 9-9-96; 8:45 am]

BILLING CODE 7708-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-37629; File No. SR-Phlx-96-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in Narrow-Based Index Option Position and Exercise Limits

September 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 2, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Phlx Rules 1001A(b)(1) and 1002A to increase the position and exercise limits for narrow-based index options from 6,000, 9,000, or 12,000 contracts to 9,000, 12,000, or 15,000 contracts.³

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4.

³ Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (i.e., aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Phlx, the purpose of the proposed rule change is to increase narrow-based index option position and exercise limits in order to attract additional trading interest and, thus, promote depth and liquidity and Phlx index options. The Exchange believes that the current limits constrain certain investors from trading index options.

Currently, Phlx Rules 1001A(b)(1) and 1002A establish the following position and exercise limits for narrow-based (industry) index options: (i) 6,000 contracts for an index where a single component stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of narrow-based index option position limits; (ii) 9,000 contracts for an index where a single component stock accounted, on average, for 20% or more of the index value or any five component stocks together accounted, on average, for more than 50% of the index value, but no single component stock in the group accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of narrow-based index option position limits; and (iii) 12,000 contracts where the conditions required a limit of 6,000 contracts or 9,000 contracts have not occurred. For the reasons presented herein, the Phlx proposes to amend Phlx Rules 1001A(b)(1) and 1002A to increase the position and exercise limits for narrow-based index options from 6,000, 9,000, or 12,000 contracts to 9,000, 12,000, or 15,000 contracts.

investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

The Exchange believes that the proposed increase is appropriate in light of the Exchange's more than ten years experience trading index options. In 1983, the Gold/Silver Index ("XAU") was the first narrow-based index option to be traded on the Phlx, listed with a position limit of 4,000 contracts.⁴ Since that time, the Exchange has honed its experience in monitoring and surveilling index options trading by developing and implementing an increasingly sophisticated regulatory program. This program has benefited from technological advances and has matured alongside index options trading. Moreover, the market for index options has also evolved, as more investors are familiar with the product and its uses. This is reflected in the appreciable growth in index options volume not only since 1983 but in most recent years as well.⁵

The Exchange recognizes that the purposes of these limits are to prevent manipulation and to protect against disruption of the markets for both options as well as the underlying securities. The Exchange has considered the effects of increased position limits on the marketplace and believes that concerns regarding manipulation and disruption are adequately addressed by the Phlx's regulatory program. The Phlx continues to monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits and the new limits will not diminish the surveillance function in this regard.

Since 1983 and the advent of the XAU, the Exchange has listed several index options. Currently, the Phlx trades options on the following seven narrow-based indexes, with their current position limits noted:

1. Gold/Silver Index ("XAU") 6,000 contracts.
2. Utility Index ("UTY") 12,000 contracts.
3. Phlx/KBW Bank Index ("BKX") 12,000 contracts.
4. Phone Index ("PNX") 6,000 contracts.
5. Semiconductor Index ("SOX") 12,000 contracts.
6. Airline Sector Index ("PLN") 12,000 contracts.
7. Forest/Paper Products ("FPP") 12,000 contracts.

The current levels for narrow-based index options have been in place since

⁴ See Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1993) (File No. SR-Phlx-83-17).

⁵ According to the Phlx, index options volume increased 48% (from 998,780 contracts to 1,483,585 contracts) from the period January-June 1995 to January-June 1996.

September 1995.⁶ Since that time, however, index options have continued to experience heavy and steady volume, with a concomitant increase in open interest. In this light, the Exchange believes that the proposed limits of 9,000, 12,000, or 15,000 contracts should further increase the depth and liquidity of the markets for index options by attracting additional investor interest. The Phlx also believes that higher position limits would further accommodate the hedging needs of Exchange market makers and specialists, who are restricted by current levels.

Further, the Exchange believes that the proposed increases are reasonable. The Phlx states that in prior releases approving increased position limits, the Commission has acknowledged that a gradual, evolutionary approach has been adopted in increasing position and exercise limits. Accordingly, the Phlx proposes a 25% increase in the highest tier (from 12,000 to 15,000 contracts); a 33% increase in the middle tier (from 9,000 to 12,000 contracts); and a 50% increase in the lowest tier (from 6,000 to 9,000 contracts). The Exchange believes that these proposed increases are consistent with the gradual evolution cited by the Commission, as the proposed levels represent reasonable increases which are in line with prior changes.⁷

The Exchange believes that the 1995 changes were so modest (20% or less) that position limit increases are once again needed. Since the 1995 changes were implemented, the Exchange has been requested by its members and customers to again propose an increase in position limits, arguing that these limits hamper their ability to execute investment strategies. In light of the large portfolios common to institutional trading and the large-sized transactions that are required to execute complicated, cross-market strategies, such requests emphasize that institutional hedging needs and trading objectives may exceed current limits. Floor members have also expressed the resulting deleterious effect on index options trading in an exchange environment. Based on such member

⁶ See Securities Exchange Act Release No. 36194 (September 6, 1995), 60 FR 47637 (September 13, 1995) (P8le No. SR-Phlx-95-16) (increasing position and exercise limits for narrow-based index options to 6,000, 9,000, or 12,000 contracts) ("Securities Exchange Act Release No. 36194").

⁷ See, e.g., Securities Exchange Act Release No. 36194, *supra* note 6, where the Phlx's narrow-based position limit changes represented a 9% increase in the lowest tier (from 5,500 to 6,000 contracts); a 20% increase in the middle tier (from 7,500 to 9,000 contracts); and a 14% increase in the highest tier (from 10,500 to 12,000 contracts).

and customer requests, the Exchange has also realized that the current position limit levels continue to discourage market participation by large investors and the institutions that compete to facilitate the trading interests of large investors. Accordingly, this proposal aims to accommodate the liquidity and hedging needs of large investors as well as the facilitators of those investors.

In proposing these position and exercise limit increases, the Exchange considered whether alternatives were available to accommodate both members and investors. For instance, an index option hedge exemption was recently implemented by the Exchange. However, the specific requirements of this exemption, including the definition of a hedge, may not be useful for all investors. In addition, the Exchange considered whether flexible index options ("FLEX options"), which are subject to separate, higher position limits, address the needs expressed to the Phlx. In this regard, the Exchange realized that because of certain attributes of FLEX options, such as lack of continuous quoting, this product's utility may be limited to a discrete group of investors. Likewise, the Exchange does not believe that FLEX options trading should foreclose the Exchange's responsibility to embellish upon its listed index options program by revisiting and addressing regulatory restrictions such as position limits.

Concurrent with the proposed increase in position limits, the Exchange is also proposing a corresponding increase to narrow-based index option exercise limits. The Exchange believes that this increase is necessary and appropriate for the same reasons as the rationale cited above for the proposed position limit increases. Furthermore, exercise limits constrict trading strategies by preventing investors from exercising positions larger than the limit within five consecutive business days. The Exchange also notes that most of its index options currently are or will become European-style, exercisable only during a specified period at expiration, such that the manipulation and market disruption concerns associated with large exercises will be limited.⁸

2. Statutory Basis

The Exchange believes that its proposal to increase narrow-based index option position and exercise limits is

⁸ See, e.g., Securities Exchange Act Release No. 37575 (August 15, 1996), 61 FR 43289 (August 21, 1996), (File No. SR-Phlx-96-18) (order approving change in exercise style of Phlx's National Over-the-Counter Index from American-style to European-style).

consistent with Section 6 of the Act in general, and with Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. The Exchange also believes that the proposal should remove impediments to and perfect the mechanism of a free and open market by providing market opportunity to investors constricted by current position limit levels. The Phlx believes that by stimulating market participation, and thereby increasing option market depth and liquidity, the proposed rule change should promote just and equitable principles of trade. At the same time, the Phlx believes that the proposed position limits should continue to prevent fraudulent and manipulative acts and practices as well as protect investors and the public interest by limiting the ability to disrupt and manipulate the markets for options as well as the underlying securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-96-33 and should be submitted by October 1, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-23038 Filed 9-9-96; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

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 comment. The ICR describes the nature of the information collection and its expected cost and burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 3, 1996 [FR 61, page 34920].

DATES: Comments must be submitted on or before October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267-2326.

⁹ 17 CFR 200.30-3(a)(12).

SUPPLEMENTARY INFORMATION:

United States Coast Guard

Title: Application for Tonnage Measurement of Vessels.

OMB No. 2115-0086.

Affected Public: Vessel owners.

Abstract: The collection of information requires vessel owners to submit application for tonnage measurement to the Coast Guard or an organization delegated by the Coast Guard. Additional information may be required if an owner requests certain tonnage treatment.

Need: 46 U.S.C. 14104 requires that before a vessel is documented or recorded under laws of the United States, or where the application of law of the United States to a vessel is determined by its tonnage, the vessel must be measured for tonnage.

Burden Estimate: The estimated burden is 44,000 hours annually.

Title: Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalent/Alternatives and Exemptions.

OMB No. 2115-0096.

Affected Public: Operators of vessels and owners of waterfront facilities.

Abstract: The collection of information requires the inspection of discharge removal equipment on vessels and requires monitoring, reporting and recordkeeping regarding discharges of oil or hazardous materials by facilities and vessels. The regulated industry has the option of requesting, in writing, either equivalent or alternative procedures, methods or equipment standards in lieu of any requirement or a full or partial exemption of any requirement.

Need: Under the Federal Water Pollution Control Act and Executive Order 12777, Coast Guard has the authority to issue regulations to prevent the discharge of oil or hazardous materials from waterfront facilities and vessels.

Burden Estimate: The estimated burden is 1,840 hours annually.

Title: Records Relation to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities.

OMB No.: 2115-0143.

Affected Public: Employers of persons engaged in Outer Continental Shelf activities.

Abstract: The collection of information requires employers of vessels and units engaged in exploration and exploitation of offshore resources on the OCS such as gas and oil to ascertain the citizenship of their employees and to maintain records of same.

Need: 43 U.S.C. 1356 authorizes the Coast Guard to issue regulations to man

or crew outer continental shelf (OCS) facilities with U.S. citizens or permanent resident aliens.

Burden Estimate: The estimated burden is 1,510 hours annually.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, DC 20503, Attention OST Desk Officer.

Issued in Washington, DC, on September 5, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96-23074 Filed 9-9-96; 8:45 am]

BILLING CODE 4910-62-P

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

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 comment. The ICR describes the nature of the information collection and its expected cost and burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 20, 1996 [FR 61, page 25265].

DATES: Comments must be submitted on or before October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202-366-2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: Supplementary Training Course Application.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133-0030.

Affected Public: U.S. merchant seamen, both officers and unlicensed personnel. U.S. citizens employed in other areas of waterborne commerce also may receive this training on a space available basis.

Abstract: Section 1305(a) of the Maritime Education and Training Act of 1980 states that the Secretary may provide additional training on maritime subjects and may make such training available to the personnel of the

merchant marine of the United States and to individuals preparing for a career in the merchant marine of the United States. Also, the U.S. Coast Guard (USCG) requires a fire fighting certificate for U.S. merchant marine officers, effective December 1989, pursuant to the 46 CFR 10.205(g) and 10.207(f).

Need and Use of the Information: Information is needed for eligibility assessment, enrollment, attendance verification and recordation. Without this information the courses would not be documented for future reference by the program or individual student.

This application form is the only document of record and is used to verify that students have attended the course.

Annual Burden: 100 hours.

Issued in Washington, DC, on September 5, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96-23075 Filed 9-9-96; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 30, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-96-1674.

Date filed: August 30, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 27, 1996.

Description: Application of Mountain Air Express, Inc. d/b/a MAX pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Department's Rules of Practice, applies for a certificate of public convenience and necessity to engage in scheduled and charter interstate air

transportation of persons, property and mail.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96-23070 Filed 9-9-96; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Notice of Availability of Draft FAA ASR-11 Programmatic Environmental Assessment and Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and comment period.

SUMMARY: The FAA announces the availability of the Draft Programmatic Environmental Assessment (PEA) for the ASR-11 Radar which assesses the potential environmental impacts of the FAA ASR-11 Radar program. The FAA and the Department of Defense (DOD) are both planning to upgrade air traffic control infrastructure by systematically replacing analog systems with state-of-the-art digital technology. The FAA plans to install up to 120 digital systems nationwide. The Draft PEA is subdivided into five main sections, including: NEPA requirements and FAA's ASR-11 program; Purpose and Need for Action; Implementation; and Cumulative Impacts. In accordance with the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), the FAA has prepared a Draft PEA to determine whether the deployment and operation of the ASR-11 will have a significant impact on environmental quality. The FAA plans to prepare a Final PEA after a 45 day comment period during which time the FAA will collect and review comments and incorporate appropriate changes for the Final PEA. Comments regarding the Draft PEA should be mailed to Jerome D. Schwartz, Environmental Specialist, Federal Aviation Administration, Surveillance Integrated Product Team, AND-400, 800 Independence Avenue, SW, Washington, DC 20591.

DATES: Comments must be received on or before October 25, 1996.

FOR FURTHER INFORMATION CONTACT:

Jerome D. Schwartz, Environmental Specialist, Federal Aviation Administration, Surveillance Integrated Product Team, AND-400, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 358-4946.

Issued in Washington, DC on September 4, 1996.

Gerald J. Taylor,

Product Lead, Terminal Products Team, AND-410.

[FR Doc. 96-23093 Filed 9-9-96; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-96-44]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 16, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. 28673, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267-3939 or Marisa Mullen (202) 267-9681 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of

Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 5, 1996.

Joseph A. Conte,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28673.

Petitioner: EAA Aviation Foundation, Inc., Experimental Aircraft Association, Inc.,

Sections of the FAR Affected: 14 CFR 91.315

Description of Relief Sought: To permit the EAA Aviation Foundation to use its B-17 aircraft, which is certified as a limited category aircraft, to provide flight experiences to members of EAA who have also become members of the B-17 Historical Society through a donation to the Foundation.

[FR Doc. 96-23095 Filed 9-9-96; 8:45 am]

BILLING CODE 4910-13-M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 1996, there were six applications approved. Additionally, five approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103-272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Charter County of Wayne, Michigan, Detroit, Michigan.

Application Number: 96-02-U-00-DTW.

Application Type: Use PFC revenues.
PFC Level: \$3.00.

Total Net PFC Revenue Approved For Use: \$3,137,000.

Charge Effective Date: December 1, 1992.

Estimated Charge Expiration Date: June 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved For Use of PFC Revenue at Detroit Metropolitan Wayne County Airport: Land acquisition and preliminary design for fourth parallel runway.

Brief Description of Project Approved For Use of PFC Revenue at Willow Run Airport: Perimeter property fencing and removal of airport hazard.

Decision Date: August 2, 1996.

For Further Information Contact: Leonard Mizerowski, Detroit Airports District Office, (313) 487-7277.

Public Agency: Natrona County International Airport Board of Trustees, Casper, Wyoming.

Application Number: 96-02-C-00-CPR.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total Approved Net PFC Revenue in This Application: \$427,704.

Estimated Charge Effective Date: March 1, 1997.

Estimated Charge Expiration Date: November 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved For Collection and Use of PFC Revenue: Aircraft rescue and firefighting (ARFF) improvements, Acquire snow removal equipment, Construct wildlife control fencing, Rehabilitate airfield lighting system, Rehabilitate taxiway C, Relocate road out of runway safety area.

Decision Date: August 2, 1996.

For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 286-5525.

Public Agency: City of San Angelo, Texas.

Application Number: 96-02-U-00-SJT.

Application Type: Use PFC revenue.

PFC Level: \$3.00.

Total PFC Revenue Approved For Use in This Decision: \$414,667.

Charge Effective Date: May 1, 1993.

Estimated Charge Expiration Date: March 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved For Use of PFC Revenue: Perimeter road, Extend runway 36 and taxiway P (phase 1), Replace/relocate approach light system runway 3, Security upgrade.

Decision Date: August 5, 1996.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222-5614.

Public Agency: Palm Beach County Department of Airports, West Palm Beach, Florida.

Application Number: 96-02-C-00-PBI.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total Approved Net PFC Revenue in This Decision: \$21,997,000.

Estimated Charge Effective Date: May 1, 1999.

Estimated Charge Expiration Date: April 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Palm Beach International Airport (PBI).

Brief Description of Projects Approved For Use of PFC Revenue at PBI: 95-B acquire land in Part 150 noise compatibility plan, 96-B acquire land in Part 150 noise compatibility plan, ARFF vehicle replacement.

Brief Description of Project Approved For Use of PFC Revenue at North County General Aviation Airport: Install instrument landing system and distance measuring equipment.

Brief Description of Projects Approved For Collection and Use of PFC Revenue at PBI: 95A—revised—west enplane roadway baggage improvements, land acquisition (development), Construct outer perimeter road south phase 2, Reconstruct aprons B-D-E, Intermodal transportation study.

Decision Date: August 29, 1996.

For Further Information Contact: Bart Vernace, Orlando Airports District Office, (407) 648-6583.

Public Agency: Dade County Aviation Department, Miami, Florida.

Application Number: 96-02-U-00-MIA.

Application Type: Use PFC revenue.

PFC Level: \$3.00.

Total PFC Revenue Approved For Use in This Decision: \$42,034,000.

Charge Effective Date: November 1, 1994.

Estimated Charge Expiration Date: May 1, 1998.

Classes of Air Carriers Not Required to Collect PFC'S: No change from previous decision.

Brief Description of Projects Approved For Use of PFC Revenue: Concourse A expansion phase II, Concourse A phase II apron and utilities.

Decision Date: August 30, 1996.

For Further Information Contact: Bart Vernance, Orlando Airports District Office, (407) 648-6586.

Public Agency: City of Bemidji and County of Beltrami, Bemidji, Minnesota.

Application Number: 96-01-C-00-BII.

Application Type: Impose and use PFC revenue.

PFC Level: \$3.00.

Total Approved Net PFC Revenue: \$368,221.

Estimated Charge Effective Date: November 1, 1996.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bemidji/Beltrami County Airport.

Brief Description of Projects Approved For Collection and Use of PFC Revenue: Airfield signing, automatic entry doors, and snow retention devices, Upgrade master plan and airport layout plan, Runway 7/25 and taxiway pavement

rehabilitation, PFC application, Taxiway A pavement rehabilitation, Safety area upgrade.

Brief Description of Projects Approved in Part For Collection and Use of PFC Revenue: Terminal building expansion and [remodeling], installation of lighted runway guidance signs, acquisition of avigation easements, revision of the radio control system, and other minor projects.

Determination: Approved in part. The project element to install airfield guidance and hold signs was begun prior to November 5, 1990, and the costs have been determined not allowable for the PFC program. Any "other minor projects" not included in the project description or project justification contained in the application are not described sufficiently, nor was sufficient justification provided, to allow the FAA to make a determination as to eligibility. Therefore, these "other minor projects" are not approved. The remainder of the project is approved. Runway 13/31 pavement rehabilitation.

Determination: Approved in part. The approved amount was reduced from that contained in the Attachment B for this project in the application. Subsequent to the application being submitted, construction bids were submitted which were lower than had been estimated and additional Airport Improvement Program funds were received which reduced the amount of PFC revenue required to finance the project.

Decision Date: August 30, 1996.

For Further Information Contact: Gordon Nelson, Minneapolis Airports District Office, (612) 725-4358.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93-01-C-01-CBI, West Palm Beach, FL	05/09/96	\$34,817,091	\$38,801,096	04/01/99	05/01/99
93-01-C-01-ASE, Aspen, CO	08/15/96	1,614,986	1,533,541	02/01/98	12/01/98
93-01-I-01-GCC, Gillette, WY	08/15/96	369,132	331,540	09/01/99	02/01/01
96-01-C-01-LAR, Laramie, WY	08/15/96	126,457	126,457	10/01/00	10/01/00
94-01-C-01-MIA, Miami, FL	08/29/96	112,519,000	64,770,000	11/01/96	05/01/98

Issued in Washington, D.C. on September 7, 1996.

Kendall L. Ball,

Acting Manager, Passenger Facility Charge Branch.

[FR Doc. 96-23096 Filed 9-9-96; 8:45 am]

BILLING CODE 4910-13-M

Surface Transportation Board¹

[STB Finance Docket No. 32986]

Missouri Pacific Railroad Company— Trackage Rights Exemption—Elgin, Joliet and Eastern Railway Company

Elgin, Joliet and Eastern Railway Company (EJ&E) has agreed to grant overhead trackage rights to Missouri Pacific Railroad Company (MP) over approximately 130 miles of rail lines extending from milepost 0 in South Chicago, IL, through Gary, IN (milepost 12 and milepost 45, including Kirk Yard), including EJ&E's City Track Line between Gary and Goff, IN, and EJ&E's Whiting Line from Cavanaugh, IN, to Calumet Tower, IN, through milepost 25 at Chicago Heights, IL, milepost 0 at Joliet, IL, and milepost 29 at West Chicago, IL, to Waukegan, IL, to the end of EJ&E's ownership near milepost 74.² The trackage rights were scheduled to become effective on the date of final agreement of the parties but not sooner than August 28, 1996, the effective date of the exemption.³

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323-24.

² In addition to describing the proposed trackage rights, MP has recited that operation of those rights may require construction of some connecting track between the EJ&E and either the MP or another railroad. MP states that the construction would not require Board authorization and "none is sought by this notice." Publication of this notice should not be deemed to be acquiescence by the Board in MP's characterization of the Board's jurisdiction over any such construction.

³ A Petition to Reject, to Revoke, And/Or to Stay was filed in this proceeding (and also relates to STB Finance Docket No. 32985) on August 27, 1996, by Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL). The City of West Chicago and the Brotherhood of Locomotive Engineers join with UTU-IL in separate petitions filed on August 27, 1996, and August 29, 1996, respectively. The petitions will be addressed in a separate decision or decisions.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32986, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, #830, Omaha, NE 68179.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 4, 1996.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96-23118 Filed 9-9-96; 8:45 am]

BILLING CODE 4915-00-P

[STB Finance Docket No. 32985]

Union Pacific Railroad Company— Trackage Rights Exemption—Elgin, Joliet and Eastern Railway Company

Elgin, Joliet and Eastern Railway Company (EJ&E) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over approximately 130 miles of rail lines extending from Waukegan, IL, on the north at the beginning of EJ&E's ownership near milepost 74, through milepost 29 at West Chicago, milepost 0 at Joliet, and milepost 25 at Chicago Heights, IL, and Gary, IN (milepost 12 and milepost 45, including Kirk Yard), to milepost 0 at South Chicago, IL, including EJ&E's City Track Line between Gary and Goff, IN, and EJ&E's Whiting Line from Cavanaugh, IN, to Calumet Tower, IN.² The trackage rights were scheduled to become effective on the date of final agreement of the parties

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323-24.

² In addition to describing the proposed trackage rights, UP has recited that operation of those rights may require construction of some connecting track between the EJ&E and either the UP or another railroad. UP states that the construction would not require Board authorization and "none is sought by this notice." Publication of this notice should not be deemed to be acquiescence by the Board in UP's characterization of the Board's jurisdiction over any such construction.

but not sooner than August 28, 1996, the effective date of the exemption.³

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32985, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, #830, Omaha, NE 68179.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 4, 1996.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96-23119 Filed 9-9-96; 8:45 am]

BILLING CODE 4915-00-P

[STB Docket No. AB-290 (Sub-No. 185X)]

Norfolk Southern Railway Company— Abandonment Exemption—in Des Moines, Polk County, IA

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 1.1 mile of its line of railroad between milepost SD-339.7 and SD-340.8 in Des Moines, Polk County, IA.

NS has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on

³ A Petition to Reject, to Revoke, And/Or to Stay was filed in this proceeding (and also relates to STB Finance Docket No. 32986) on August 27, 1996, by Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL). The City of West Chicago and the Brotherhood of Locomotive Engineers join with UTU-IL in separate petitions filed on August 27, 1996, and August 29, 1996, respectively. The petitions will be addressed in a separate decision or decisions.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

the line has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 10, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29⁴ must be filed by September 20, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 30, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's

²The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

³See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

⁴The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 13, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 4, 1996.

By the Board, David M. Konschnick, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96-23073 Filed 9-9-96; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of National Customs Automation Program Test Regarding Presentation of Electronic Cargo Declarations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces a Customs plan to conduct a test program to allow the electronic submission of certain inward vessel manifest information. This notice invites public comments concerning any aspect of the test, informs interested members of the public of the eligibility requirements for voluntary participation in the test, and describes the requirements required to be met in order to participate in the test.

EFFECTIVE DATE: The test will commence no sooner than December 9, 1996, and will run for approximately one year. Comments concerning the eligibility standards, selection criteria, or information submission requirements must be received on or before October 10, 1996. To participate in the test, the necessary information as outlined in this notice must be filed with Customs on or before October 10, 1996.

ADDRESSES: Written comments regarding this notice and letters requesting participation in the test program should be addressed to Cargo Control and Entry, U.S. Customs Service, 1301 Constitution Avenue,

NW., Room 1328, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

For operational or policy matters: William Scopa (202) 927-3112.

For systems or automation matters: Kim Santos (202) 927-0651.

For legal matters: Larry L. Burton (202) 482-7040.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103-182, 107 Stat. 2057 (December 8, 1993), contains provisions which pertain to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 of the Act created sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411 through 1414), which define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for the remote location filing of entries (section 414). Actual testing procedures for both existing and planned components were established by the publication of Treasury Decision 95-21 in the Federal Register of March 16, 1995 (60 FR 14211), which appear as section 101.9, Customs Regulations (19 CFR 101.9).

I. Description of Proposed Test

The Concept of Electronically Filing the Cargo Declaration

The filing of the Customs Form 1302 Cargo Declaration electronically allows an importing carrier to transmit one cargo declaration to all Customs ports for review and for enforcement purposes. It also allows for the electronic release of cargo to carriers and other participating parties, as well as facilitating the process of many other Customs regulatory requirements related to the control and processing of cargo. For many years now, Customs has been accepting electronic cargo data from importing carriers, while simultaneously requiring the same information to be submitted on the Customs Form 1302 (Cargo Declaration). This test program will eliminate the requirement for participating Automated Manifest System (AMS) vessel carriers who qualify for the test to submit a Customs Form 1302 Cargo Declaration to Customs, so long as they

remain proficient in meeting the electronic standards established by Customs.

Since August of 1995, Customs has been working in partnership with the trade through the Customs Electronic Systems Advisory Committee (CESAC) and other parties in developing the standards for this test program as well as identifying necessary enhancements to the AMS. Although electronic cargo data has been received by Customs from importing carriers for many years, there were many technical omissions in the AMS system which made the paper collection of cargo information more useful for enforcement and control purposes. Customs is now confident that the standards developed and enhancements being made to the AMS will make it possible to eliminate the need to submit the Customs Form 1302 simultaneously with the transmission of the cargo data electronically, and hopes to verify this through the test program. Since many importing carriers have been transmitting the cargo data to Customs nationally for many years now, the test will run nationally.

Description of the Test

Customs objectives are: (1) To work with the trade community, other agencies, and other parties impacted by this program in the design, implementation and evaluation of the test; and,

(2) To use the experience gained by the test in designing operational procedures, automated systems, and regulations that are supportive of and compatible with the Customs Reorganization, the ongoing effort to improve the Trade Compliance Process, and the Automated Commercial System Redesign (ACE).

All procedures and processes will be closely coordinated with all participating and affected parties. The intent of this program is to test such operational issues as communication, cargo movement and release, as well as whether participants can meet the requirements of transmitting timely, complete and accurate cargo data.

Regulatory Provisions Suspended

Provisions in sections 4.7 and 4.7a of the Customs Regulations (19 CFR 4.7 and 4.7a), relating to the presentation of a cargo declaration with a vessel manifest, will be suspended during this test. Participants will not be required to submit a Customs Form 1302 to Customs or have a copy on board a vessel, including the "dock copy" or the "traveler", but must be able to download or otherwise produce required information for Customs, or

Coast Guard officers who may board. Participants will not be required by Customs to provide a paper Customs Form 1302 as an additional copy. There is no suspension of the requirements contained in the cited regulatory provisions to submit the other forms to be presented with a vessel manifest, such as the Customs Forms 1300 and 1301.

II. Eligibility Criteria

Participation in this testing will not be considered confidential information, and the identity of participants will be made available to the public upon written request. In order to qualify for participation in the test program it will be necessary that a party either be a qualified Automated Manifest System (AMS) carrier, or that a qualified AMS Service Center(s) be designated to submit required information to Customs. In order to be considered AMS-qualified, vessel operators and other entities must have been tested by Customs and determined to possess full technical capability to transmit and receive all types of AMS data. Customs authorizes Automated Manifest System (AMS) service centers to assist carriers in the submission of required electronic information. Such AMS centers may include Port Authorities and other interested parties who act on behalf of carriers who either cannot or choose not to develop the required electronic capabilities for direct participation. Service centers are selected by Customs only if they demonstrate that they possess the full technical capacity and necessary facilities to receive and transmit data for requesting carriers. If these conditions are met, such entities are officially recognized as "Designated Service Centers." Any participating carrier that is using a Designated Service Center is reminded that the carrier is responsible for all electronic submission requirements incorporated in the test. User requirements for qualifying carriers will be governed by those published in the handbook entitled "Customs Automated Manifest Interface Requirements-Intermodal" (CAMIR). A list of Designated Service Centers can be obtained from the U.S. Customs Service, Office of Information Technology, 1301 Constitution Avenue, NW., Washington DC 20229. All test participants, whether participating directly or through the services of a Designated Service Center or Centers, must submit required information electronically in all ports in which business is conducted. Electronic submissions will be required for all cargo and/or vessel types, including containerized, bulk, and break-bulk.

In order to qualify for participation in the program, an applicant is subject to and must have the electronic capabilities to meet additional requirements and conditions as follows:

1. Except as further specified in this paragraph, any carrier participating in this test program must electronically transmit complete cargo declaration information to Customs no less than 48 hours prior to actual arrival of a vessel in a port of the United States. Such transmissions will be considered certified for manifesting purposes at 48 hours prior to actual vessel arrival. For voyages from the last foreign port of departure of less than 48 hours duration, the complete cargo declaration must be transmitted no later than the actual time of vessel arrival in a United States port. Such transmissions will be considered certified for manifesting purposes at time of vessel arrival. The presentation of complete and accurate cargo information is essential to Customs enforcement mission. Therefore, each time a participating carrier fails to transmit complete and accurate cargo declaration information in a timely manner, the port director may require the presentation of the paper Customs Form 1302 for the relevant voyage. All test participants are required to transmit into AMS the actual time and date of vessel arrival in a United States port.

In any instance where a participant whose vessel is on a voyage of longer than 48 hours duration fails to transmit the necessary electronic cargo data at or before 48 hours before a vessel arrival, the port director retains the discretion to delay the unloading of the vessel. Unloading may also be delayed with respect to those voyages of less than 48 hours in duration if the port director requires additional time to review the data transmitted. Alternatively, with respect to all participants, the port director may allow the unloading to proceed but require the cargoes to be maintained and controlled by the test participant at the place of unloading in a manner as directed. In no instance, unless otherwise notified by the port director, shall cargo be removed from the place of unloading until the cargo declaration transmission has been received by Customs, an entry has been filed, and the carrier receives electronic releases for the cargo or electronic authorizations from Customs to transfer the cargo.

2. The electronic cargo declaration information submitted under this program at the first port of arrival in the United States must list all foreign cargo on board the vessel, regardless of the intended port of discharge. In addition

to the current inventory of AMS data elements, participants using CAMIR and ANSI ASCX12 standards will be required to transmit the five following new data elements:

- Place of Receipt of Cargo;
- Container Dimensional Data:

Height, Width, Length, equipment type;

- Container Seal Number;
- Type of Container Movement (e.g.,

House-to-House, Container Station-to-Container Station, etc.);

- Remaining on Board Indicator.

For AMS participants using the CAMIR format, the above data elements must be provided as follows:

Place of Receipt: B02 record, columns 16–32;

Remaining on Board: B01 record, column 48;

Container Information: C01 record, Length (columns 50–54), Height (columns 55–62), Width (columns 63–70), Type (columns 71–74 ISO Code);

Container Seal Number: C01 record, columns 18–32 (Seal 1), columns 33–47 (Seal 2);

Type of Container Move: C01 record, columns 76–77.

System participants should refer to the CAMIR handbook issued in August of 1995 for detailed record layouts and additional instructions.

For participants using the American National Standards Institute, Accredited Standards Committee X12 (ANSI, ASC X12) formats, the data should be sent as follows:

Place of Receipt: M11 segment, data element M1110;

Remain on Board: M11 segment, data element M1109;

Container Information: VID segment, Length = DE VID06, Height = DE VID07, Width = DE VID08, Type = DE VID09 ISO Code;

Container Seal Numbers: VID segment, Seal 1 = DE VID04, Seal 2 = DE VID05;

Type of Cont. Service Code: VID segment, DE = VID11.

Also, it is required that the following data elements be included in electronic transmissions under this test:

- Foreign port of lading;
- Place of receipt by the carrier of all cargoes. This means the first place the participating carrier took possession of the cargo, whether it be a port city or other location;
- Container number (s), length, height, width, and equipment type;
- Container seal number;
- Type of container movement (e.g., House-to-House, Container Station-to-Container Station, etc.);
- Bill of Lading number(s);
- Total quantity and unit type of merchandise in a shipment (quantity of

pallets or cargo containers is not sufficient; smallest external packaging unit must be used);

- Complete shipper, consignee, and notify party names and addresses. If both notify party and consignee information is available to the participant, both shall be transmitted, including such information as “to order” or similar language if that is all that is supplied to the participant by the shipper;

- Indications of presence of hazardous materials;

- Marks and numbers, including in that data field when available:

- Country and/or other place of origin information;

- Consignee or other name listed;

- Other conveyance information, such as identification of feeder vessels;

- Purchase order, style and other identifying numbers;

- Description of merchandise. In the case of consolidated shipments, merchandise descriptions must be distinguished by quantity, weight and identifying characteristics for each shipment within a consolidated batch.

3. When a vessel is being operated under the terms of a vessel sharing or slot charter arrangement, each test participant carrier with cargo aboard the vessel is responsible for filing required information with Customs regarding their particular electronic cargo declaration. Test participant parties who provide required data to Customs electronically must do so for their portion of the cargo within the time limits established in this document.

Test participant carriers operating under a vessel sharing or slot charter arrangement shall transmit an identical vessel name and the true, accurate, and identical date and time of vessel arrival. The vessel name shall be identified with the Lloyd's Register of Ships vessel code, as submitted by the vessel owner/operator. The owner/operator of a vessel operating under a vessel sharing or slot charter arrangement shall be responsible for noting on the Customs Form 3171 (Application-Permit-Special License-Unlading-Lading-Overtime Services), each of the carriers sharing or chartering space aboard the vessel. The Customs Form 3171 shall be submitted at least 48 hours prior to a vessel's arrival. If the participant has been granted a term permit (CF 3171), the participant shall always notify the port director at least 48 hours prior to arrival of a vessel, of any changes in parties or slot charterers as well as any other changes made after the granting of the term permit. This should be accomplished by submitting an amended copy of the original term permit.

4. Beginning with records created as of the date of first participation by a carrier and continuing for a period of 6 months after the actual date of arrival of a particular shipment, participants must maintain for immediate examination by Customs upon demand, all electronic or paper records kept in the normal course of business which relate to any particular bill of lading. After 6 months from the date of arrival, unless in an unreconciled status, any such records must be produced for examination by Customs within 5 business days following any demand for their production. Records of any bill of lading which remains in an unreconciled status must always be available for immediate examination by Customs.

Electronically maintained records may be furnished to Customs either in the form of a computer-generated report, or in screen prints of relevant electronic data. Regardless of presentation form, submissions must clearly identify, for each shipment, the vessel name and voyage number, date of arrival, port of discharge, bill of lading and container number(s), total quantity of goods, full identity of shipper and consignee, and all bill of lading transactions posted against a bill during the period when the party was responsible for the proper safekeeping and delivery of the merchandise.

5. Test participants shall not remove merchandise from Customs custody until the cargo declaration transmission has been received by Customs, an entry has been filed, and an electronic release notice has been received from Customs. Removing merchandise without proper electronic notice from Customs will subject a participant to full penalty liability and no such penalty will be mitigated to less than \$500. This mitigation limitation does not apply in the case of any bill of lading which is in an unreconciled status at the time of the effective date of this test program.

6. Electronically reported cargo may not be transferred on a Permit-to-Transfer (PTT) unless the participating carrier has received an electronic authorization from Customs.

7. If for any reason the electronic system becomes inoperative or Customs is unable to receive electronic Customs Form 1302 information transmitted by test participants, it will be required that parties submit the paper Customs Form 1302 to Customs. The port director may require up to three copies.

If for any reason the Automated Manifest System, cargo selectivity, or other entry-related automated system is inoperative and electronic cargo release and selectivity is not possible, a Customs port director will, after a 2-hour

waiting period, implement procedures to allow for the non-electronic release of all cargo until such time as electronic systems are again operative. The port director will ensure that any of the appropriate information on entries released under these manual procedures is properly entered into the electronic system as soon as possible.

8. All empty containers aboard a vessel will be manifested for discharge at the first United States port of arrival, indicating the foreign port of loading of each container. If the vessel is proceeding coastwise, within 24 hours after time of arrival and at least two hours prior to time of arrival at the next United States port, the test participant will retransmit the empty container list indicating the empty containers remaining on board and any containers which were loaded at preceding ports which are to be discharged domestically.

All empty containers discharged are to be held at the place of unloading until the carrier transmits, in AMS, the actual list of containers discharged at the place of unloading. Upon such transmission, all empty containers shall be considered automatically released from Customs custody unless it is otherwise indicated by Customs that any or all are to be held. Since the AMS Empty Container Module does not allow electronic holds to be placed, any necessary holds will be placed through physical means. These requirements apply equally to domestic and foreign carriers.

9. In the case of Foreign Freight Remaining On Board (FROB) a vessel entering the United States and not intended for discharge in this country, test participants are required to transmit all bill of lading cargo data pertaining to such shipments at the first U.S. port of arrival. Such bills of lading shall be automatically released in AMS upon transmission of the data unless placed on hold with the test participant by Customs through electronic or other means. FROB bill of lading cargo data is subject to all of the same requirements and standards set forth in this document which apply to other bill of lading cargo data.

10. The penalties provided in law and regulations with respect to any discrepancy between the cargo described and identified to Customs and the cargo actually found to be aboard a

vessel continue to remain in full force and effect during the test program.

11. The enormous reliance placed upon the vessel cargo declaration by Customs in its mission to interdict the flow of illegal narcotics into the United States cannot be overstated. Therefore, if the Director, Trade Compliance, Customs Headquarters, determines that a test participant's electronic transmissions of the cargo declaration are deficient to the extent that they compromise that mission in any manner, he may require that participant to submit a Customs Form 1302 Cargo Declaration for all or a portion of that party's vessel arrivals during the pendency of the test period. Such participant must submit the paper Customs Form 1302 in accordance with the requirements of Part 4 of the Customs Regulations (19 CFR Part 4).

Application Process

Parties desiring to participate in this test program must submit a written statement to the United States Customs Service, Cargo Control & Entry, 1301 Constitution Avenue, NW., Room 1328, Washington, D.C. 20229-0002, on or before 30 days from publication in the Federal Register. The document, signed by an authorized official of the carrier, must state that the carrier meets all qualifications as outlined in this document and wishes to voluntarily participate in the test. The statement must acknowledge that all submissions made to Customs as part of the test are required to be accomplished electronically. The document must also designate a national point of contact and telephone number, and shall also identify local contacts and telephone numbers for the use of Customs personnel at individual ports.

Bases for Participant Selection

Eligible importing carriers will be considered for participation in this test. Customs is looking for a variety of circumstances and participants in this test. We stress that those not selected for participation will be invited to comment on the test and to participate in its evaluation. Selection will be based on the depth of an applicant's electronic interface capabilities and the ability to meet all the user requirements in the CAMIR and in this notice. Participants selected will be notified by means of the Customs Electronic Bulletin Board.

III. Test Evaluation Criteria

Once participants are selected, Customs will meet to review all public comments received concerning any aspect of the test program or procedures, amend procedures as necessary in light of those comments, form problem-solving teams, and establish baseline measures and evaluation methods and criteria. Six months after implementation of the program, evaluations of the program will be commenced with the final results published in the Federal Register and Customs Bulletin as required by section 101.9(b), Customs Regulations (19 CFR 101.9(b)). The following evaluation methods and criteria have been suggested:

1. Establish baseline measurements through questionnaires to the trade and Customs port officials.

2. Use the results obtained through various Compliance Measurement programs related to vessel manifesting to determine the efficiency of electronic transmissions of the cargo data.

Preliminary choices of evaluation criteria for Customs and other government agencies include workload impact (workload shifts, cycle time, etc. * * *), policy and procedural accommodation, and trade compliance impact. Possible criteria for the trade participants are cost benefits, system efficiency, operational efficiency, and other items identified by the group.

In conclusion, it is emphasized that if a company is interested in participating in the test program, it must first be tested by Customs and become a qualified AMS carrier, or it may use a qualified AMS service center. It is also emphasized that a participant must transmit the electronic cargo declaration for all of its arrivals in all Customs ports, for all types of cargo. Upon arrival of a vessel at its first U.S. port, an electronic cargo declaration for all cargo aboard the vessel must be transmitted, regardless of the intended port of discharge.

Dated: September 5, 1996.

Samuel H. Banks,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 96-23084 Filed 9-9-96; 8:45 am]

BILLING CODE 4820-02-P

Corrections

Federal Register

Vol. 61, No. 176

Thursday, September 10, 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.

Wednesday, August 28, 1996, make the following correction:

On page 44192, in the SUMMARY: section, in the 2d column, on the 18th line, "\$23000,000" should read "\$300,000."

BILLING CODE 1505-01-D

On page 44119, in the second column, in the fourth line, "effective date" should read "comment date".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV96-998-3 PR]

Domestically Produced Peanuts Handled by Persons Subject to Peanut Marketing Agreement No. 146; Changes in Terms and Conditions of Indemnification

Correction

In proposed rule document 96-21959, beginning on page 44192, in the issue of

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AD41

Migratory Bird Hunting; Proposal for Approval of Bismuth-Tin Shot as a Nontoxic

Correction

The correction to proposed rule document 96-20726 in the issue of Tuesday, August 27, 1996, is corrected as follows:

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 94-055]

Licensing and Manning for Officers of Towing Vessels

Correction

In proposed rule document 96-21734, beginning on page 43720, in the issue of Monday, August 26, 1996, make the following correction:

On page 43720, in the DATES: section, on the second line, "September 25" should read "September 24".

BILLING CODE 1505-01-D

Federal Register

Tuesday
September 10, 1996

Part II

Department of Health and Human Services

Indian Health Service

Department of Housing and Urban Development

Department of the Interior

Bureau of Indian Affairs

Interdepartmental Agreement on Indian
Housing Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR-3763-N-02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Interdepartmental Agreement on Indian Housing Program

AGENCIES: Offices of the Indian Health Service (HHS); the Assistant Secretary for Public and Indian Housing, (HUD); and the Bureau of Indian Affairs, (Interior).

ACTION: Notice of Interdepartmental Agreement.

SUMMARY: This notice announces an Interdepartmental Agreement which sets forth the guidelines by which HUD, the Bureau of Indian Affairs, and the Indian Health Service will coordinate their efforts in the delivery of services and financial assistance to Tribes and Indian Housing Authorities.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT:

Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B-133, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755-0032. Hearing- or speech-impaired individuals may access this number by calling the Federal Relay Service TTY at 1-800-877-8339. (With the exception of the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. September 2, 1994 Notice of Proposed Interdepartmental Agreement

On September 2, 1994 (59 FR 45702) HUD published a notice which proposed to set forth the working relationship among HUD, the Bureau of Indian Affairs (BIA), and the Indian Health Service (IHS) in the delivery of services to Tribes and Indian Housing Authorities (IHAs) in conjunction with the planning and construction of new housing developed with financial assistance of HUD's Indian housing program.

The Interdepartmental Agreement (IA) establishes a general foundation for this cooperative effort and guidelines by

which each of the three agencies will interact with Tribal governments and IHAs. The IA will be supplemented, as necessary, by individual Memorandums of Agreement (MOA) developed between local decision makers and the specific Federal agencies assisting in the development of the housing.

The BIA Housing Improvement Program (HIP) was eliminated from this IA to streamline the agreement among all signatory agencies in the development of HUD Indian housing programs. It is anticipated that the IHS and the BIA will be addressing the BIA-HIP separately. Other sections pertaining to program procedures are more appropriately covered in the program handbook or program NOFA and have been deleted from the IA.

HUD solicited public comments on the proposed IA. Eight comments were received. The following section of the preamble presents a summary of the comments raised by the commenters, and HUD's responses to these comments.

II. Comments on the September 2, 1994 Notice of Proposed Interdepartmental Agreement

Comment. Two commenters wrote that proposed section 5.2.1 of the IA, which concerns the construction of access roads, should be revised to clarify that the BIA "has responsibility for access roads which provide public access to cluster sites only and not private access to individual sites which the BIA is prohibited from constructing."

Response. HUD has adopted the comment by revising section 5.2.1 to exclude individual homesites from the access road construction requirements.

Comment. One commenter wrote that the language in proposed section 5.2.1 granting the BIA a lead time of 2½ years in the construction of access roads should be revised. The commenter believed that "in the 2½ year interim, the 'temporary' access road built by the IHA becomes unacceptable as there is a void of responsibility for constructing a permanent access road. The BIA should be required to pick up these roads immediately after the IHA has completed the project."

Response. HUD has not revised the IA as a result of this comment. Due to budgetary prioritization, the 2½ year time-frame is necessary for BIA to complete its part of the project.

Comment. Two of the commenters urged that the IA provide for greater coordination in National Environmental Policy Act (NEPA) compliance efforts. One of the commenters recommended that section 7.0 be revised to specify

that each signatory agency will follow procedures in a manner which will avoid or minimize delays and that timelines for compliance will be included in time schedules worked out at the project coordination meeting. The other commenter suggested that the IA permit the designation of a lead agency "in performing NEPA compliance where the project encompasses the functions of all [three] agencies." The commenter believed this would expedite the development of a project by eliminating "multiple comment periods, multiple opportunities for litigation, and multiple FONSI or EISs."

Response. Based upon the IHS's recommendation, HUD has revised the IA as a result of these comments. Section 7.0 now provides that in order to minimize delays, HUD, or the Tribal government which has assumed HUD's NEPA responsibility, shall be the lead agency for the preparation of all required environmental statements.

Comment. One commenter wrote that the IA should address land acquisitions since, according to the commenter, "acquisitions require as much coordination between the BIA and HUD as does development." Specifically, the commenter believes the BIA should delegate authority to area offices to approve land acquisitions. Alternatively, the commenter proposed that the BIA designate a person to exclusively review and approve HUD financed land acquisitions. Moreover, the commenter suggested that the IA require NEPA review of these acquisitions.

The commenter also suggested that HUD and the BIA coordinate their acquisition related time requirements. The commenter believed that, due to the time needed by the BIA to take land in trust, some IHAs may not be able to meet HUD's requirement that construction commence within 30 months of a program reservation date. The commenter urged that HUD and the BIA "negotiate time lines and procedures to avoid these conflicts."

Response. HUD and the BIA will work more closely in coordinating time requirements.

Comment. One commenter wrote to suggest that proposed section 2.2 of the IA be revised to specify that the BIA will review and approve all Tribal trust, restricted fee and allotted land housing leases in accordance with 25 CFR part 162. Furthermore, the commenter suggested additional language stating that BIA will review and approve all easements to housing sites in accordance with 25 CFR part 169. Lastly, the commenter recommended that proposed section 2.3 be revised to

require that all housing sites have approved easements and leases before the start of construction.

Response. HUD has adopted the first two elements of this comment. In reference to requiring the IHAs to complete all easements and leases prior to construction, this is a requirement that is inappropriate for this IA since the IA does not encompass the Indian Housing Authorities. This is a requirement that would more appropriately be added to the local Memorandum of Understanding (MOU).

Comment. One commenter objected to the fact that proposed section 2.2 of the IA "does not specifically state that the BIA is responsible for funding access road construction in HUD assisted housing projects." According to the commenter, "this weakens the BIA's responsibility of supporting HUD-assisted housing projects."

Response. HUD has not adopted this comment. The IA does not have the force of law, but merely sets forth the coordination efforts of HUD, the BIA, and the IHS. Accordingly, the comment is inappropriate for inclusion in the IA.

Comment. Two commenters objected to the language in proposed section 6.3, *IHS PARTICIPATION IN HUD FUNDED SANITATION FACILITIES CONSTRUCTION*, which states that the IHS "may participate" in the construction of sanitation facilities. According to the commenters "this statement does not adequately commit the IHS to execute their responsibility for sanitation system development which serves [sic] Native Americans."

Response. Based on the IHS's recommendation, HUD has adopted this comment by revising section 6.3 to require that the IHS endeavor to participate in the construction of sanitation facilities.

Comment. One commenter wrote that because the IA's scope is limited to Indian mutual help and low rent programs, it does not go far enough in achieving coordination between the signatory Federal agencies. The commenter recommended that other programs, such as Indian HOME and the BIA Housing Improvement Program (HIP) be included in the IA.

Response. HUD has not revised the IA as a result of this comment. The HOME and HIP programs have different requirements and agency responsibilities. If the coordination of efforts becomes a problem for these programs, separate agreements can be negotiated.

Comment. One of the commenters recommended that language be inserted in section 5.0, *DEVELOPMENT OF ON-SITE AND OFF-SITE ROADS*, which

includes the "standards of road design and construction that would be required to assure States, cities, counties, townships, etc. assume responsibility for the maintenance and up-keep of roads and streets within the on-site construction area." These standards would be in effect when the State and local government have construction and design requirements that exceed ASHTO requirements.

Response. HUD has not revised the IA as a result of this comment. Under 24 CFR 905.250, the IHAs are already required to comply with appropriate local road design standards.

Comment. One of the commenters recommended that the IA specify which agencies are responsible for the costs of complying with Federal, State, or local statutory requirements. Among other examples, the commenter pointed to the costs associated with meeting EPA environmental requirements.

Response. HUD has not revised the IA as a result of this comment. The question of financial responsibility for complying with the various statutory requirements is more properly addressed in the individual MOAs.

Comment. One commenter wrote that the IA was vague concerning IHS duties. The commenter urged that the IA be revised to specify that the IHS has the responsibility of providing water, waste water and solid waste facilities, and O&M infrastructure.

Response. Based on the IHS's recommendation, HUD has adopted this comment by revising section 6.2. This section now details the IHS's statutory authority and responsibility for utilizing HUD funds to provide sanitation facilities for HUD financed Indian homes.

The text of the Interdepartmental Agreement follows:

Interdepartmental Agreement on the Indian Housing Program

The Department of Housing and Urban Development—Office of Native American Programs

The Department of Interior—Bureau of Indian Affairs

The Department of Health and Human Services—Indian Health Service

1.0 Statement of Purpose

The purpose of the Interdepartmental Agreement (IA) is to set forth the working relationship among the Department of Housing and Urban Development (HUD), the Bureau of Indian Affairs (BIA), and the Indian Health Service (IHS) in the delivery of services to Tribes and Indian Housing Authorities (IHAs) in conjunction with

the planning and construction of new Indian housing developments. The above agencies share a common goal to assist Tribes in improving their living environment through the delivery of quality housing and infrastructure. This goal can be more readily achieved with an efficient and integrated utilization of available resources.

This Interdepartmental Agreement establishes a general foundation for this cooperative effort and the guidelines by which each of the three agencies will interact with Tribal governments and IHAs. The IA will be supplemented, as necessary, by individual Memorandums of Agreement (MOA) developed between local decision-makers and the specific federal agencies assisting in the development of the housing.

2.0 General Agency Responsibilities

2.1 *HUD Responsibilities.* HUD will provide financial and technical assistance for the development and management of low income housing and community developments in Indian and Alaska Native areas through the mutual help/low rent Indian Housing Development Program.

2.2 *BIA Responsibilities.* BIA will provide real estate and transportation assistance to IHAs pursuant to 25 CFR parts 162, 169, and 170. These services may include (i) assistance in preparing appropriate lease documents for housing sites and required easements; (ii) review, approval and recordation of all required trust or restricted fee land lease and easement documents; where resources are available, providing assistance in obtaining real estate appraisals; (iii) development of access roads to housing sites in accordance with the Tribe's road priorities; (iv) providing maintenance services to those IHA constructed roads and streets accepted into the BIA road systems in accordance with 25 CFR part 170; and (v) provision of other support, when available, necessary for the timely development of housing.

2.3 *IHS Responsibilities.* The IHS provides a comprehensive primary and preventive health services delivery system for American Indians and Alaska Natives. The environmental health component of IHS assists Tribes in the development of Tribal sanitation facilities [water, waste water, and solid waste facilities and operation & maintenance (O&M) infrastructure]. IHS has the primary responsibility and authority to provide Native American homes and communities with the necessary sanitation facilities and related services.

3.0 Agency Coordination

3.1 *Processing Procedures.* The signatories of the IA agree to maintain timely and relevant processing of regulations, handbooks, notices and other administrative guidance for use by Tribes and IHAs. All signatory agencies will be given an opportunity to comment on such documents before they are made effective.

3.2 *Program Administration.* The signatories of the IA agree to enforce the provisions of current program guidelines with their respective area/regional offices. Disputes between or among the signatory agencies may be made in writing to the head of the appropriate area or field office involved, with a copy to the other agencies. Unresolved disputes extending more than 90 days beyond the date of submission shall be referred, in writing, to the Headquarters Working Group for resolution. This group is composed of the Director, Office of Native American Programs in HUD; Director, Office of Trust Responsibilities in BIA; and the Director, Division of Environmental Health in IHS.

3.3 *Information Sharing.* Whenever possible, the signatory agencies will provide, or cause to be provided, copies of housing and supporting infrastructure planning documents, to include utility master plans, transportation plans, and IHA comprehensive housing plans, to the appropriate area/regional offices of other signatory agencies.

HUD Field Offices of Native American Programs will provide quarterly reports on the progress of HUD's assisted housing projects to BIA and IHS. These reports will indicate the method of construction, project number, and number of units. Scheduled and actual completion dates for applicable project review points will be provided, where available.

3.4 *Grant Award.* Signatory agencies will provide copies of applicable housing and supporting infrastructure grant/project award notices to the other signatory agencies as soon as practicable after notification to Tribes.

4.0 Development of Housing Units

4.1 HUD Responsibilities.

4.1.1 *Applications.* HUD will advise IHAs to use BIA and IHS information on existing infrastructure and new construction recommendations to support proposed housing project applications for funding.

4.1.2 *Project Coordination.* HUD will advise IHAs to use handbooks concerning procedures the IHA may use to determine what assistance they need from the BIA and IHS. At the request of

a Tribe through the IHA, the BIA (including Area Road Engineers and Realty Officers) and IHS will provide, to the extent feasible, technical reviews and recommendations on project planning, design and construction documents involving supporting infrastructure, and related requirements at appropriate project review points. Appropriate project review points will be determined on a project by project basis and may include: project coordination schedule review, housing site feasibility review, project plan review, project final inspection, and record drawings review. Schedules or commitments made as a result of project coordination require the approval of the appropriate IHS and/or BIA official.

4.1.3 *Standard vs Assisted Housing Development Method.* The Standard Method of development refers to all procedures, guidelines and requirements associated with the normal development of an Indian housing project by an administratively capable IHA. The Assisted Method contains all of the procedures, guidelines and requirements associated with the development of an Indian housing development by an IHA which has requested additional HUD assistance due to its inexperience or lack of staff resources, or by an IHA which has been deemed by HUD to need additional assistance, monitoring and supervision during the development process. The Standard Method will require less technical assistance by the signatory agencies as compared to the Assisted Method.

4.2 BIA Responsibilities.

Leases, Easements and Real Estate Appraisals on Trust or Restricted Fee Property. Where resources are available, the BIA will provide real estate appraisals at the request of the IHA. All leases and easements shall be approved by the BIA.

5.0 Development of On-site and Off-site Roads

5.1 HUD Responsibilities.

On-Site Street Construction. HUD will provide sufficient funds for the construction of on-site streets, in accordance with the American Association of State Highway and Transportation Officials (AASHTO) standards. The IHA will have the overall responsibility for construction of on-site streets. The Tribal government must determine the type of streets to be constructed in conjunction with housing projects, and whether the streets will be included in the BIA Roads System for maintenance by the BIA. HUD will advise each IHA and Tribe which receives a HUD Housing

Grant that the on-site streets must be designed and constructed to AASHTO standards to be eligible for inclusion on the BIA Roads System.

5.2 BIA Responsibilities.

5.2.1 *Access Road Construction.* When requested by the Tribal government, and when resources are available, the BIA will plan and construct access roads to housing developments, excluding individual homesites. Sufficient lead time is required to develop access roads. This lead time may be as much as 2½ years. The BIA will coordinate access road construction with the IHA and make every effort to complete such roads prior to the completion of the housing project.

5.2.2 *Road/Street Maintenance.* IHA-developed streets may be added to the BIA Roads System only when the street(s) and related curb, gutters and drainage features have been built to acceptable AASHTO specifications and standards as well as to the requirements of section 504 of the Americans with Disabilities Act, and the right-of-way is transferred to the BIA. When requested by the Tribal government, and when resources are available, the BIA Area Office will accept IHA developed streets on the BIA Roads System and will provide ongoing maintenance for those streets that meet the above specifications and standards.

6.0 Development of Sanitation Facilities

6.1 *HUD Responsibility.* To the extent that funds are appropriated by Congress, HUD will provide funding to IHAs to develop water, waste water, solid waste facilities, and O&M infrastructure necessary to support individual low-rent or mutual help housing projects financed by HUD. O&M infrastructure includes the plant, equipment, tools and training needed by utility authorities to provide continuing sanitation service to the residents of HUD-financed homes, as well as the long range planning necessary to identify and implement those requirements.

6.2 *IHS Authority.* Under section 302(b)(3) of the Indian Health Care Improvement Act, the IHS has the authority to receive HUD funds to provide sanitation facilities for Indian homes financed by HUD.

6.3 *IHS Participation in HUD Funded Sanitation Facilities Construction.* When requested by the Tribe and the IHA, IHS will endeavor to participate in the construction of sanitation facilities funded by HUD under the mutual help/low rent HUD-assisted housing development program. IHS participation will be on a project by

project basis, pursuant to an approved MOA duly executed by the IHA, Tribe, IHS, and if necessary, HUD.

6.4 *Individual and Community Sanitation Systems.* Where it is determined that sanitation facilities are feasible and necessary, the following conditions will apply:

6.4.1 HUD will finance the installation of all dwelling plumbing facilities.

6.4.2 Where facilities serve only HUD-assisted housing project homes, HUD will fund the total cost of the sanitation facilities necessary to serve the project. Where HUD-assisted housing project homes are interspersed with existing homes also served by a sanitation facility, HUD shall fund a prorated share of sanitation facilities costs. All community sanitation system construction, improvement, or expansion will be designed on the basis of a total community concept, such that the proposed sanitation facilities are (a) safe and adequate to meet the environmental health needs of residents, (b) compatible with Tribal infrastructure development, (c) economically feasible to construct and operate, and (d) in compliance with applicable codes, ordinances, and industry standards.

7.0 *Environmental Compliance*

Each signatory agency (HUD, BIA, and IHS) shall be responsible for following its own applicable procedures addressing the requirements of the National Environmental Policy Act (NEPA), and related and/or similar environmental legislation and/or Executive Orders. A Memorandum of Understanding (MOU), dated June 21, 1991, signed by BIA, HUD, IHS, and the Environmental Protection Agency, clarifies each agency's role in environmental protection.

In the implementation of the roles and responsibilities identified in the MOU and herein, signatory agencies will, to the extent feasible, adopt and/or combine environmental documents which are provided by the other signatory agencies. Joint use of environmental documents that comply with NEPA and related regulations will reduce duplication and paperwork. Copies of one signatory agency's environmental determination documentation (e.g., archeological review) may be required by another signatory agency prior to granting approvals; however, the approving agency shall not require the applying agency to change procedures, format,

etc., during the review process and prior to granting its approval.

Unless otherwise provided for in a duly executed MOA, HUD, or a Tribal government which has assumed HUD's NEPA responsibility, shall be the lead agency for the preparation of environmental review, assessments and impact statements in compliance with NEPA for all HUD-assisted housing and related infrastructure projects. When BIA and IHS participate directly in these projects, they shall be cooperating agencies for the purposes of NEPA compliance.

Dated: April 30, 1996.

Donna E. Shalala,
Secretary, Department of Health and Human Services.

Dated: August 19, 1996.

Bruce Babbitt,
Secretary, Department of the Interior.

Dated: May 6, 1996.

Henry G. Cisneros,
Secretary, Department of Housing and Urban Development.

[FR Doc. 96-22923 Filed 9-9-96; 8:45 am]

BILLING CODE 4160-16-P; 4210-33-P; 4310-02-P

Federal Register

Tuesday
September 10, 1996

Part III

Department of Justice

Bureau of Prisons

28 CFR Parts 524, et al.
Editorial Amendments for Classification
and Program Review, and Education
Tests; Final Rules

DEPARTMENT OF JUSTICE**Bureau of Prisons****28 CFR Parts 524, 541, 544, and 571**

[BOP-1057-F]

RIN 1120-AA56

Editorial Amendments for Classification and Program Review; Inmate Discipline; Education, Training, and Leisure Time Program Standards; and Release Gratuities

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending four of its regulations to remove obsolete provisions, update cross-references, or to clarify procedures. More specifically, the regulations for classification and program review are amended by removing procedures for the preparation of a now obsolete form (the staff summary report) and to include a cross reference to regulations for pretrial inmates; the regulations on inmate discipline are amended by substituting control unit programs for references to United States Penitentiary, Marion; the regulations on education, training, and leisure time program standards are amended to update the reference to the release preparation program; and the regulations for release gratuities are amended to minimize confusion regarding statutory limits on maximum amounts. These amendments are intended to maintain the efficient operation of the institution and the Bureau.

EFFECTIVE DATE: September 10, 1996.**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on classification and program review; inmate discipline and special housing units; education, training, and leisure-time program standards; and on release gratuities, transportation, and clothing. A final rule on classification and program review (28 CFR part 524, subpart B) was published in the Federal Register on July 3, 1991 (56 FR 30676) and was amended on August 5, 1992 (57 FR 34662) and on June 27, 1995 (60 FR

33320). A final rule on inmate discipline and special housing units (28 CFR part 541, subpart B) was published on January 5, 1988 (53 FR 197) and was amended on October 17, 1988 (53 FR 40686), September 22, 1989 (54 FR 38987 and 39095), February 1, 1991 (56 FR 4159), July 10, 1991 (56 FR 31530), June 2, 1992 (57 FR 23260), and July 21, 1993 (58 FR 39095). A final rule on education, training, and leisure time program standards was published on December 16, 1993 (58 FR 65852). A final rule on release gratuities, transportation, and clothing (28 CFR part 571, subpart C) was published on May 21, 1991 (56 FR 23480).

The regulations on classification and program review (§ 524.12(f)) require Bureau staff to prepare a summary for inmates applying for a transfer under the treaty transfer program, for study and observation cases, and for inmates for whom no presentence investigation is available. This information need no longer be required under regulations for classification and program review because equivalent information is obtained either as part of the court-ordered study and observation, by revised regulations issued for treaty transfer cases (see 28 CFR 527, subpart E), or is provided by the Probation Office in lieu of a Presentence Investigation Report. The Bureau is therefore removing paragraph (f) and that portion of the text in § 524.16 which had been pertinent to study and observation cases ("except for the preparation of a staff summary as noted in § 524.12(f) of this part"). A new § 524.17 has been added to refer to existing regulations pertinent to pretrial inmates. Additional editorial changes include the correction of a typographical error in § 524.12(c) and an updated reference in § 524.15 to the recently retitled Administrative Remedy Program.

The regulations on inmate discipline and special housing required that staff ordinarily within 90 days of an inmate's placement in post-disciplinary detention shall return the inmate (with the exception of inmates in the United States Penitentiary, Marion, or pretrial inmates) to the general inmate population or request transfer to a more suitable institution (§ 541.22(a)(6)(i)). Further provisions covered review of the status of such inmates (§ 541.22(a)(6)(ii) and (iii)). Because of a mission change for the United States Penitentiary, Marion, (which had served as a control unit) this requirement is no longer technically correct, and the Bureau is therefore replacing the reference to that specific institution

with a generic reference to control unit programs. This revision obviates the need to make future adjustments to these regulations based upon changes in the location of a control unit program. Regulations for the operation of control unit programs are contained in 28 CFR part 541, subpart D.

The regulations for education, training, and leisure-time program standards are amended to update the reference in § 544.81(g) to the retitled release preparation program.

The regulations for release gratuities had noted that the maximum for a discretionary gratuity was \$500 and referenced 18 U.S.C. 3624(d) as the authorizing statute (§ 571.20). This statute pertains to offenders sentenced under the provisions of the Sentencing Reform Act (18 U.S.C. Chapter 227). Inmates sentenced under the former provisions of that Chapter continue to be subject to the statutory limitation of \$100 authorized by 18 U.S.C. 4281. In order to eliminate false expectations in those inmates governed by 18 U.S.C. 4281 as to the amount of a possible gratuity, the Bureau has reworded the provision to state that a discretionary gratuity may be granted up to the amount permitted by statute.

Because these amendments are administrative in nature and impose no additional restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Parts 524, 541, 544, 571

Prisoners.

Peter M. Carlson,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 524, 541, 544, and 571 in subchapters B, C, and D respectively, of 28 CFR, chapter V are amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 524.12 [Amended]

2. In § 524.12, paragraph (c) is amended by revising the phrase “at attend” in the third sentence to read “to attend”, and paragraph (f) is removed.

§ 524.15 [Amended]

3. Section 524.15 is amended by revising the phrase “Administrative Remedy Procedure” to read “Administrative Remedy Program”.

4. Section 524.16 is revised to read as follows:

§ 524.16 Study and observation cases.

Inmates committed to the custody of the U.S. Attorney General for purposes of study and observation are excluded from the provisions of this rule.

5. A new § 524.17 is added to subpart B to read as follows:

§ 524.17 Pretrial inmates.

Additional provisions pertinent to pretrial inmates are contained in § 551.107 of this chapter.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

6. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12,

1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

7. In § 541.22, paragraph (a)(6) (i), (iii), and (iv) are revised to read as follows:

§ 541.22 Administrative detention.

* * * * *

(a) * * *

(6) * * *

(i) Except for pretrial inmates or inmates in a control unit program, staff ordinarily within 90 days of an inmate’s placement in post-disciplinary detention shall either return the inmate to the general inmate population or request regional level assistance to effect a transfer to a more suitable institution.

* * * * *

(iii) Staff in a control unit will attempt to adhere to the 90-day limit for an inmate’s placement in post-disciplinary detention. Because security needs required for an inmate in a control unit program may not be available outside of post-discipline detention, the Warden may approve an extension of this placement upon determining in writing that it is not practicable to release the inmate to the general inmate population or to effect a transfer to a more suitable institution.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review (for purpose of making a disposition) the case of an inmate in a control unit program not transferred from post-disciplinary detention within the 90-day time frame specified in paragraph (a)(6)(iii) of this section. A similar, subsequent review shall be conducted every 60–90 days if post-disciplinary detention continues for this extended period.

* * * * *

PART 544—EDUCATION

8. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

9. In § 544.81, paragraph (g) is revised to read as follows:

§ 544.81 Program goals.

* * * * *

(g) Participate in a Release Preparation program; and

* * * * *

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

10. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

11. Section 571.20 is revised to read as follows:

§ 571.20 Purpose and scope.

It is the policy of the Bureau of Prisons that an inmate being released to the community will have suitable clothing, transportation to the inmate’s release destination, and some funds to use until he or she begins to receive income. Based on the inmate’s need and financial resources, a discretionary gratuity up to the amount permitted by statute may be granted.

[FR Doc. 96–23045 Filed 9–9–96; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP–1031–F]

RIN 1129–AA44

Education Tests: Minimum Standards for Administration, Interpretation, and Use

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is rescinding its regulations on Minimum Standards for Administration, Interpretation, and Use of Education Tests. Guidelines established by test publishers are adequate for the administrative processing of education tests. Because correctional management issues pertinent to specific education programs are covered by separate Bureau regulations, there is no need to maintain duplicative regulatory provisions for education test standards.

EFFECTIVE DATE: September 10, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320

First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is rescinding its regulations on minimum standards for the administration, interpretation, and use of education tests (28 CFR part 544, subpart B). A final rule on this subject was last published in the Federal Register February 21, 1990 (55 FR 6178).

In accordance with E.O. 12866, the Bureau is reviewing its regulations for the purpose of ensuring that it promulgates only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need. The Bureau has determined that separately stated regulations on minimum standards for the administration, interpretation, and use of education tests are no longer necessary. Applicability provisions contained in § 544.11 are duplicated in the regulations for specific education programs such as the literacy program (28 CFR part 544, subpart H) or English-as-a-Second Language program (28 CFR part 544, subpart E). Test procedures specified in § 544.12 either are covered by guidelines established by the test providers themselves or may be handled by staff as strictly administrative matters. Revisions to the regulations for

the literacy program have made obsolete the provisions in § 544.13 on the consequences of a refusal to take the Adult Basic Level Examination or other standardized test.

Because this rescission imposes no new restrictions on inmates and provides the Bureau with the flexibility to implement administrative procedures related to education tests, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or

the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 544

Prisoners.

Kathleen M. Hawk,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 544 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

§ 544.10—544.13 (Subpart B)—[Removed and Reserved]

2. Subpart B consisting of §§ 544.10 through 544.13 is removed and reserved.

[FR Doc. 96-23044 Filed 9-9-96; 8:45 am]

BILLING CODE 4410-05-P

Federal Register

Tuesday
September 10, 1996

Part IV

Department of Defense
General Services
Administration

National Aeronautics and
Space Administration

Federal Acquisition Regulation;
Performance-Based Payments; Proposed
Rule

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Part 52

[FAR Case 96-005]

RIN 9000-AH22

**Federal Acquisition Regulation;
Performance-Based Payments**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address residual material and certain liability provisions at 52.232-32, Performance-Based Payments. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before November 12, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 96-005 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 96-005.

SUPPLEMENTARY INFORMATION:

A. Background

The current FAR clause 52.232-32, Performance-Based Payments, addresses a method of contract financing, and was implemented in Federal Acquisition Circular 90-33, dated September 26, 1995, effective as of October 1, 1995. Paragraph (f), *Title*, of the clause was intended to be functionally equivalent to paragraph (d) of 52.232-16, Progress Payments, which is another type of contract financing. However, the topics of title to residual material and liability for government-furnished property acquired under the contract, addressed in 52.232-16(d)(6) and (7) of the Progress Payments clause, were inadvertently omitted from the Performance-Based Payments clause. This rule proposes to amend FAR 52.232-32 by adding paragraphs (f)(6) and (7) to address these topics.

B. Regulatory Flexibility Act

The proposed changes are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and performance based payments are rare. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR section will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 96-005) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the

Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: September 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

**PART 52—SOLICITATION PROVISIONS
AND CONTRACT CLAUSES**

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.232-32 is amended by revising the clause date; redesignating the heading of paragraph (f)(1) as the heading of paragraph (f), and adding new paragraphs (f)(6) and (7) to read as follows:

52.232-32 Performance-Based Payments.

* * * * *
PERFORMANCE-BASED PAYMENTS
(DATE)

* * * * *
(f) *Title*. (1) * * * * *
* * * * *

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

- (i) Delivered to, and accepted by, the Government under this contract; or
- (ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

* * * * *

[FR Doc. 96-23030 Filed 9-9-96; 8:45 am]

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AGRICULTURE DEPARTMENT**Federal Crop Insurance Corporation**

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AGRICULTURE DEPARTMENT**Farm Service Agency**

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COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

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COMMODITY FUTURES TRADING COMMISSION

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ENVIRONMENTAL PROTECTION AGENCY

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Children and Families Administration

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Food and Drug Administration

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HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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Coast Guard

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Federal Aviation Administration

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National Highway Traffic Safety Administration

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TREASURY DEPARTMENT

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Internal Revenue Service

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