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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

Cotton Classification Under Cotton Futures Legislation

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 27 to 45, revised as of January 1, 1996, §§ 27.62 through 27.67, 27.69, 27.72, 27.73, 27.80, 27.81, 27.83, 27.85, 27.87, and 27.89 through 27.98 were inadvertently omitted. The omitted sections should immediately preceed § 27.99 on page 15, and should read as follows:

§ 27.62 Conditions for review of classification and for incidental Micronaire determination for original applicant.

The person for whom the classification of cotton has been or is to be performed under this subpart may have a review of such classification by filing a written application therefor before the delivery of such cotton on a basis grade contract and not later than the expiration of the seventh business day following the date of the first certification of the cotton involved. Such written application may be made at the same time as the request for initial classification. The written application may also include a request for Micronaire determination of the cotton if this service has not been previously performed.

[22 FR 10926, Dec. 28, 1957, as amended at 42 FR 40677, Aug. 11, 1977]

§ 27.63 Conditions for review of classification and for Micronaire determination for receiver.

Any receiver of cotton upon a basis grade contract who has not redelivered such cotton on a basis grade contract may have a review of the classification of any cotton of which the classification has not been previously reviewed by filing a written application within 7 business days following the date of the delivery of cotton class certificates in accordance with this subpart. When more than 5,000 bales of cotton shall have been delivered to the same receiver on the same date of delivery, the receiver may, upon proper showing of the facts, be allowed 5 additional business days for filing the application for review of the classification of any such cotton, provided written request for such extension is filed within 7 business days following the date of such delivery. In the event of the reissue of certificates to replace any certificates delivered, the receiver may have a review of the classification of the cotton covered by such reissued certificates, provided such review is requested within the time herein prescribed, calculated from the date of delivery of such reissued certificates. Any such receiver may also have a Micronaire determination, with or without review of classification, under these same conditions on cotton on which this service has not been previously performed under this subpart.

[48 FR 49212, Oct. 25, 1983]

§ 27.64 Application for review of classification and for Micronaire determination; filing.

(a) Every application review of classification or for Micronaire determination under § 27.62 or § 27.63 shall be filed with the Marketing Services Office serving the location at which the cotton is stored. The application shall in each case be in the hands of such Marketing Services Office within the time specified in § 27.62 or § 27.63 for applying for review: *Provided,* That any Marketing Services Office may designate any officer of the Cotton Division or a representative of an exchange inspection agency located at another point to receive applications, and in such cases the applications shall be in the hands of the persons so designated within the time specified. Any person making such application shall, upon call of the Marketing Services Office or person with whom such application was filed under this section, surrender the cotton class certificates covering the cotton involved.

(b) Such applications shall be made on a form furnished or approved by the Cotton Division and shall contain (1) the name and address of the party, if any, from whom the cotton was received on a basis grade contract; (2) the lot numbers of the cotton; and (3) the warehouse bale numbers.

[22 FR 10928, Dec. 28, 1957, as amended at 26 FR 1657, Feb. 25, 1961; 42 FR 40677, Aug. 11, 1977; 48 FR 49213, Oct. 25, 1983]

§ 27.65 Completion of review of classification.

In any case where an application for review of classification or an application for Micronaire determination has been filed with respect to cotton previously designated as tenderable, such review or determination may be completed notwithstanding the subsequent tender of such cotton on a basis grade contract.

[22 FR 10926, Dec. 28, 1957, as amended at 42 FR 40677, Aug. 11, 1977]

§ 27.66 Dismissal of application for review.

Any application for review may be dismissed whenever it shall be found by the Area Director or the Director that it was filed without good cause or for dilatory purposes.

[48 FR 49213, Oct. 25, 1983]

§ 27.67 Use of new samples in reviews and Micronaire determinations.

Unless the use of new samples shall be necessary in the judgment of the Area Director, a review classification pursuant to §§ 27.61 to 27.72, or a Micronaire determination pursuant to § 27.14, § 27.62 or § 27.63, shall be made by reference to the samples, if any, of the cotton involved in the possession of the Marketing Services Office; but if the use of new samples is deemed necessary by the Area Director, or if there are no samples of the cotton in the possession of the Marketing Services Office, or if the samples of the cotton have been in the possession of the Marketing Services Office for more than one year, the person requesting the review classsification or Micronaire determination shall cause new samples to be drawn for the purpose and submitted to the Marketing Services Office in accordance with this subpart.

[48 FR 49213, Oct. 25, 1983]

§ 27.69 Classification review; notations on certificate.

When a review of classification is made after the issuance of a cotton class certificate, the results of the review classification, the date of issuance of the

review classification results, and the signature of the Head, Grading Section shall be entered on the cotton class certificate. Thereupon the certificate shall be returned to the person who requested the review.

[48 FR 49213, Oct. 25, 1983]

§ 27.72 Withdrawal of application for review.

Any application for review may be withdrawn by the applicant at any time before the review classification of the cotton covered thereby has been completed, subject to the payment of such fees, if any, as may be assessed pursuant to §§ 27.80 through 27.92.

Transfers of Cotton

§ 27.73 Supervision of transfers of cotton.

Whenever the owner of any cotton inspected and sampled for classification pursuant to this subpart and for which the owner holds valid cotton class certificates desires to transfer such cotton to a different delivery point, or to a different warehouse at the same delivery point, for the purpose of having it made available for delivery upon a basis grade contract, such transfer shall be effected under the supervision of an exchange inspection agency or a supervisor of cotton inspection.

[48 FR 49213, Oct. 25, 1983]

Costs of Classification and Micronaire

§ 27.80 Fees; classification, micronaire, and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved is tenderable or not, the person requesting the services shall pay fees as follows:

(a) Initial classification and certification—$2.00 per bale.

(b) Review classification and certification—$2.00 per bale.

(c) Micronaire determination and certification—30 cents per bale.

(d) Combination service—$3.50 per bale. (Initial classification, review classification, and Micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates.)

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any two or more of these operations are performed together—$1.60 per bale.

(f) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any one of these operations is performed individually—$1.60 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.75 per bale.

(h) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.00 per bale.

[51 FR 22061, June 18, 1986, as amended at 55 FR 20440, May 17, 1990]

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for the purpose of business convenience, or when made necessary by the transfer of cotton under the supervision of any exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of $.70 cents for each certificate issued.

[55 FR 20440, May 17, 1990]

§ 27.83 No fees for certain certificates.

No fee shall be collected for a new cotton class certificate issued in lieu of a prior certificate solely for the purpose of correcting clerical errors therein or for the purpose of substituting a new form applicable to outstanding certificates, or without an application therefor.

§ 27.85 Fees; withdrawn requests or applications.

When the request for classification, or the application for review or classification, of any cotton or the request for Micronaire determination for any cotton shall be withdrawn after the service requested has been started pursuant to such request or application, the person making such request or application shall pay the fee prescribed by § 27.80 as to any service completed prior to such withdrawal.

§ 27.87 Fees; classification and Micronaire determination information.

Whenever the person who requests the classification of, or Micronaire determination for, any cotton, or the person on whose behalf such request is made, also requests the transmission by telegraph or telephone of information concerning such classification or Micronaire determination, the person making the request for such classification or determination shall pay, in addition to the applicable costs prescribed in this subpart, the cost of tolls incurred in such transmission.

§ 27.89 Expenses; inspection; sampling.

Expense of inspection and sampling, the preparation of the samples and the delivery of such samples in accordance with § 27.24, shall be borne by the party requesting the classification of the cotton involved. When a review of classification or a Micronaire determination is requested and samples of the cotton involved are not in possession of a Marketing Services Office, the expense of inspection, sampling, preparation of samples, and delivery of the samples to the Marketing Services Office shall be borne by the party requesting the service.

[48 FR 49213, Oct. 25, 1983]

§ 27.90 Bills for payment of fees and expenses.

The Cotton Division shall deliver bills to all persons from whom payment for fees or expenses on account of services under this subpart shall be due. Such bills shall be rendered as soon as practicable after the last day of each month for the amounts due and unpaid on such day. When necessary, in the discretion of the Area Director or the Director, any bill may be rendered at an earlier date for any fees and expenses then due by the person to whom such bill shall be rendered. Payment of any such bill shall be made as soon as possible after the rendition thereof, but in any event not later than 2 weeks after such rendition.

[48 FR 49213, Oct. 25, 1983]

§ 27.91 Advance deposit may be required.

If requested by the Area Director with whom the classification request is required to be filed or by the Director, the person from whom any payment under this subpart may become due shall make an advance deposit to cover such payment in such amount as may be necessary in the judgment of the official requesting the same.

[48 FR 49213, Oct. 25, 1983]

§ 27.92 Method of payment; advance deposit.

Any payment or advance deposit under this subpart shall be by check, draft, or money order, payable to the order of ''Agricultural Marketing Service, USDA,'' and may not be made in cash except in cases where the total payment or deposit does not exceed $1.

Spot Markets

§ 27.93 Bona fide spot markets.

The following markets have been determined, after investigation, and are hereby designated to be bona fide spot markets within the meaning of the act:

Southeastern, North Delta, South Delta, East Texas and Oklahoma, West Texas, Desert Southwest and San Joaquin Valley. Such markets will comprise the following areas:

Southeastern

All counties in the states of Alabama, Florida, Georgia, North Carolina and South Carolina and all counties in the state of Tennessee east of and including Stewart, Houston, Humphreys, Perry, Wayne and Hardin counties.

North Delta

All counties in the states of Arkansas and Missouri and all counties in Tennessee west of and including the counties of Henry, Benton, Henderson, Decatur, Chester and McNairy counties and the Mississippi counties of Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union and Yalobusha.

South Delta

All counties in the state of Louisiana and all counties in the state of Mississippi not included in the North Delta market.

East Texas and Oklahoma

All counties in the state of Oklahoma and the Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

West Texas

All Texas counties not included in the East Texas, Oklahoma and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt and Lea.

Desert Southwest

The Texas counties of Val Verde, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Culberson, Hudspeth and El Paso, all New Mexico counties except those included in the West Texas market, all counties in the state of Arizona and the California counties south of and including Riverside and Orange counties.

San Joaquin Valley

All California counties except those included in the Desert Southwest market.

[53 FR 29326, Aug. 4, 1988]

§ 27.94 Spot markets for contract settlement purposes.

The following are designated as spot markets for the purpose of determining as provided in paragraph 15b(f)(3) of the act, the differences above or below the contract price which the receiver shall pay for grades tendered or deliverable in settlement of a basis grade contract:

(a) For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange:

Southeastern, North Delta, South Delta, Eastern Texas and Oklahoma, and Desert Southwest.

(b) [Reserved]

[53 FR 29327, Aug. 4, 1988]

Price Quotations and Differences

§ 27.95 Spot markets to conform to Act and regulations.

Every bona fide spot market shall, as a condition of its designation and of the retention thereof, conform to the act and any applicable regulations.

[53 FR 29327, Aug. 4, 1988]

§ 27.96 Quotations in bona fide spot markets.

The price or value and differences between the price or value of grades and staple lengths of cotton shall be based solely upon the official cotton standards of the United States and shall be the actual commercial value or price and differences as determined by the sale of spot cotton in such spot market. Quotations shall be determined and maintained in each designated spot market by the Cotton Division, Agricultural Marketing Service, USDA, as follows:

(a) In spot markets designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volume the prices or values of base qualities which are deliverable on any active futures contracts, as well as the differences for all other qualities deliverable on such contracts. The prices or differences for non-deliverable qualities will be determined and quoted by bale volume in each such spot market for those qualities normally produced or traded in that particular market.

(b) In spot markets not designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volume the prices or differences for all qualities of cotton normally produced or traded in each such spot market.

[53 FR 29327, Aug. 4, 1988]

§ 27.97 Ascertaining the accuracy of price quotations.

The buyers and sellers of cotton in each spot market shall be responsible for providing accurate and timely price, quality, and volume of purchases data by growth area to the Cotton Division. The Cotton Division is responsible for ascertaining the accuracy of the price quotations in each designated spot market. The Cotton Division will carry out this responsibility by performing the following duties and functions:

(a) The Cotton Division will collect and analyze pertinent information on the prices and values of spot cotton from each spot market.

(b) In the process of determining price quotations, the Cotton Division will contact a minimum of three buyers and sellers of cotton in each bona fide market at least two times per week during the active trading season and one time per week during the remainder of the year to obtain information on prices, qualities, volume, and terms of sales in sufficient detail to determine quotations.

(c) The Cotton Division will summarize the price and quality data and, based on analysis of this summary, make determinations regarding quotations of price, value and differences.

(d) Quotations for each spot market shall be reviewed and approved by the Cotton Division's Market News Branch Chief or Assistant Branch Chief prior to publication.

(e) The Cotton Division will publish the appropriate quotations by bale volume for grades, staple lengths, micronaire determinations, and other quality factors for each spot market on a daily basis.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under OMB control number 0581–0029.)

[53 FR 29327, Aug. 4, 1988]

§ 27.98 Value of grade where no sale; determination.

As provided in § 27.96, whenever no sale of a particular grade of cotton shall have been made on a given day in a particular spot market, the value of such grade in the market on that day will be determined as follows:

(a) If on such given day there shall have been in such market both a sale of any higher grade and a sale of any lower grade, the average of the declines, or advances, or decline and advance, as the case may be, of the next higher grade and the next lower grade so sold shall be deducted from, or added to, as the case may be, the value, on the last preceding business day, of the grade the value of which on such given day is sought to be ascertained.

(b) If on such given day there shall have been in such market a sale of either a higher or a lower grade, but not sales of both, the decline or advance of the next higher or the next lower grade so sold shall be deducted from, or added to, as the case may be, the value on the last preceding business day of the grade the value of which on such given day is sought to be ascertained.

(c) If on such given day there shall have been in such market no sale of spot cotton of any grade, the value of each

grade shall be deemed to be the same as its value therein on the last preceding business day, unless in the meantime there shall have been bona fide bids and offers, or sales of hedged cotton, or other sales of cotton, or changes in prices of futures contracts made subject to the act, which in the usual course of business would clearly establish a rise or fall in the value of spot cotton in such market, in which case such rise or fall may be calculated and added to or deducted from the value on the preceding business day of cotton of all grades affected thereby.

[53 FR 29327, Aug. 4, 1988]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 342

RIN 3064–AB81

Rules of Practice and Procedure; Applications for a Stay or Review of Actions of Bank Clearing Agencies

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has conducted a review of its regulations pursuant to Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. As a result, the FDIC is deleting its rules and regulations which pertain to Applications for a Stay or Review of Actions of Bank Clearing Agencies, and replacing them with new, more concise provisions. At the same time, the FDIC is moving those shorter provisions to a new subpart, which contains the FDIC's Rules of Practice and Procedure. The changes are intended to streamline the FDIC's regulations and to remove duplicative provisions, while maintaining uniformity in approach among the other banking agencies and the Securities and Exchange Commission (SEC).

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: John F. Harvey, Trust Review Examiner, (202) 898–6762, or Andrea Winkler, Counsel, (202) 736–0762, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78 *et seq.*) requires the registration of clearing agencies and implements a system of self-regulation by registered clearing agencies. Registered clearing agencies have the authority to impose certain disciplinary sanctions upon participants, to deny participation in the clearing agency, or to prohibit or limit a participant's access to services provided by clearing agencies. (15 U.S.C. 78q–1 (b)(3)(g), (b)(5)(C)). Persons aggrieved by such adverse actions by clearing agencies may request a stay of such action or may appeal the action to the appropriate regulatory agency. The FDIC is the appropriate regulatory agency with regard to FDIC-insured banks (other than members of the Federal Reserve System), when the appropriate regulatory agency for the clearing agency is not the SEC. The Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (FRB) have similar regulatory responsibilities with regard to banks under their jurisdiction.

The FDIC's current regulations are contained in Part 342 of its Rules and Regulations. (12 CFR Part 342) Those regulations are identical in substance to the regulations of the SEC. (17 CFR 240.19d–2 to 240.19d–3) Therefore, the FDIC is shortening its regulatory provisions by deleting those provisions contained in Part 342 which are the same as those contained in the regulations of the SEC. Instead, the FDIC is including a cross-reference to the SEC regulations in new Subpart S to Part 308 of its Rules and Regulations.

II. Section-by-Section Summary

Part 308—Rules of Practice and Procedure

Subpart S—Applications for a Stay or Review of Actions of Bank Clearing Agencies

Section 308.400 Scope

This section is identical to current section 342.1 of the FDIC's regulations and sets forth the authority for the regulations and the entities to which the regulations apply.

Section 308.401 Applications for Stays of Disciplinary Sanctions or Summary Suspensions by a Bank Clearing Agency

This section has been shortened to reflect that applications for a stay of a disciplinary action pursuant to section 17(b)(3)(G) of the Exchange Act, or summary suspension or limitation or prohibition of access to services under section 17(b)(5)(C) of the Exchange Act, may be filed with the Corporation according to the procedures set forth in the regulations of the SEC (17 CFR 240.19d–2), which are identical in substance to those currently contained in § 342.2 of the FDIC's regulations. References to the Commission in the regulations of the SEC will be deemed to be references to the Corporation for purposes of this section.

Section 308.402 Applications for Review of Final Disciplinary Sanctions, Denials of Participation, or Prohibitions or Limitations of Access to Services Imposed by Bank Clearing Agencies

This section has been shortened to reflect that an application to the Corporation under section 19(d)(2) of the Exchange Act for review of any final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by bank clearing agencies shall be conducted according to the procedures set forth in the regulations of the SEC (17 CFR 240.19d–3), which are identical in substance to those currently contained in § 342.3 of the FDIC's regulations. References to the Commission in the regulations of the SEC will be deemed references to the Corporation for purposes of this section.

III. Regulatory Flexibility Act

Chapter 6 of Title 5 of the United States Code which pertains to ''The Analysis of Regulatory Functions'' does not apply to the final rule regarding Part 342. The revision to Part 342 is not a ''rule'' for purposes of that statute (see 5 U.S.C. 601(2)) as it is not a rule for which the FDIC is required to publish a general notice of proposed rulemaking under section 553(b) of Title 5 of the United States Code. This is because the final rule contains only technical changes and makes no substantive or procedural changes to existing rules, and therefore, the FDIC has determined for good cause that public notice and comment is unnecessary, and that the rule should be published in final form.

IV. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 104th Cong., 2d Sess. (1996)) provides generally for agencies to report rules to Congress and for Congress to review the rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the Administrative Procedure Act at 5 U.S.C. 551. The FDIC will file the appropriate reports pursuant to the statute.

The Office of Management and Budget has determined that this final revision

to Part 342 does not constitute a ''major'' rule as defined by the statute.

V. Exemption From Public Notice and Comment

Because the FDIC finds that the new rules are the same in substance as those currently found in Part 342, and that the changes are purely technical in nature, the FDIC has determined for good cause that public notice and comment is unnecessary, and that the rule should be published in final form.

VI. Effective Date

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) provides that regulations shall become effective thirty days after their publication in the Federal Register. 5 U.S.C. 553. Thus, this amendment to Part 308 and Part 342 of the FDIC's regulations shall become effective on October 15, 1996.

List of Subjects

12 CFR Part 308

Administrative practice and procedure, Banks, banking, Claims, Crime, Equal access to justice, Lawyers, Penalties, State nonmember banks.

12 CFR Part 342

Administrative practice and procedure, Banks, banking.

For the reasons set out in the preamble, and under the authority of 12 U.S.C. 1819, chapter III of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), 3909, 4717; 15 U.S.C. 78 (h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a.

2. A new Subpart S comprising §§ 308.400 through 308.402 is added to Part 308 to read as follows:

Subpart S—Applications for a Stay or Review of Actions of Bank Clearing Agencies

Sec.

Subpart S—Applications for a Stay or Review of Actions of Bank Clearing Agencies

§ 308.400 Scope.

This subpart is issued by the Corporation pursuant to sections 17A(b)(3)(g), 17A(b)(5)(C), 19 and 23 of the Securities Exchange Act of 1934 (Exchange Act), as amended (15 U.S.C. 78q–1 (b)(3)(g), (b)(5)(C), 78s, 78w). It applies to applications by banks insured by the Corporation (other than members of the Federal Reserve System) for a stay or review of certain actions by clearing agencies registered under the Exchange Act, for which the Securities and Exchange Commission (Commission) is not the appropriate regulatory agency under section 3(a)(34)(B) of the Exchange Act (bank clearing agencies).

§ 308.401 Applications for stays of disciplinary sanctions or summary suspensions by a bank clearing agency.

Applications to the Corporation for a stay of disciplinary action imposed by registered clearing agencies pursuant to section 17(b)(3)(G) of the Exchange Act, or summary suspension or limitation or prohibition of access under section 17(b)(5)(C) of the Exchange Act shall be made according to the rules adopted by the Commission (17 CFR 240.19d–2). References to the ''Commission'' in 17 CFR 240.19d–2 are deemed to refer to the ''Corporation.''

§ 308.402 Applications for review of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by bank clearing agencies.

Proceedings on an application to the Corporation under section 19(d)(2) of the Exchange Act for review of any final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by bank clearing agencies shall be conducted according to the procedures set forth in rules adopted by the Commission (17 CFR 240.19d–3). References to the ''Commission'' in 17 CFR 240.19d–3 are deemed to refer to the ''Corporation.''

PART 342—[REMOVED AND RESERVED]

1. Part 342 is removed and reserved.

By order of the Board of Directors.

Dated at Washington, DC, this 13th day of August 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–23228 Filed 9–12–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 28674; Amendment No. 71–28]

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9D, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points incorporated by reference.

EFFECTIVE DATE: These regulations are effective September 16, 1996, through September 15, 1997. The incorporation by reference of FAA Order 7400.9D is approved by the Director of the Federal Register as of September 16, 1996, through September 15, 1997.

FOR FURTHER INFORMATION CONTACT: Brenda Brown or Janet Glivings, Airspace and Rules Division (ATA–400), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, listed Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations (FAR) section 71.1 (14 CFR § 71.1). The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.9C in section 71.1, effective September 16, 1995, through September 15, 1996. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9C in full text as proposed rule documents in the Federal Register. Likewise, all amendments of these listings were

published in full text as final rules in the Federal Register. This rule reflects the periodic integration of these final rule amendments into a revised edition of Airspace Designations and Reporting Points, Order 7400.9D. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9D in § 71.1, as of September 16, 1996, through September 15, 1997. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9D.

The Rule

This action amends part 71 of the Federal Aviation Regulations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9D effective September 16, 1996, through September 15, 1997. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9D in full text as proposed rule documents in the Federal Register. Likewise, all amendments of these listings will be published in full text as final rules in the Federal Register. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, Class B, Class C, Class D, and Class E airspace areas and for all reporting points can be found in FAA Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9D is effective September 16, 1996, through September 15, 1997. During the incorporation by reference period, proposed changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as proposed rule documents in the Federal Register. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as final rules in the Federal Register. Periodically, the final rule amendments will be integrated into a revised edition of the order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9D may be obtained from the Airspace and Rules Division, ATA–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. Copies of FAA Order 7400.9D may be inspected in Docket No. 28674 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue, SW., Washington, DC, weekdays between 8:30 a.m. and 5:00 p.m., or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This section is effective September 16, 1996, through September 15, 1997.

§ 71.5 [Amended]

3. Section 71.5 is amended by removing the words ''FAA Order 7400.9C'' and adding, in their place, the words ''FAA Order 7400.9D.''

§ 71.31 [Amended]

4. Section 71.31 is amended by removing the words ''FAA Order 7400.9C'' and adding, in their place, the words ''FAA Order 7400.9D.''

§ 71.33 [Amended]

5. Paragraph (c) of § 71.33 is amended by removing the words ''FAA Order 7400.9C'' and adding, in their place, the words ''FAA Order 7400.9D.''

§ 71.41 [Amended]

6. Section 71.41 is amended by removing the words ''FAA Order 7400.9C'' and adding, in their place, the words ''FAA Order 7400.9D.''

§ 71.51 [Amended]

7. Section 71.51 is amended by removing the words ''FAA Order 7400.9C'' and adding, in their place, the words ''FAA Order 7400.9D.''

§ 71.61 [Amended]

8. Section 71.61 is amended by removing the words ''FAA Order 7400.9C'' and adding, in their place, the words ''FAA Order 7400.9D.''

§ 71.71 [Amended]

9. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words ''FAA Order 7400.9C'' and adding, in their place, the words ''FAA Order 7400.9D.''

§ 71.79 [Amended]

10. Section 71.79 is amended by removing the words ''FAA Order 7400.9C'' and adding, in their place, the words ''FAA Order 7400.9D.''

§ 71.901 [Amended]

11. Paragraph (a) of § 71.901 is amended by removing the words ''FAA Order 7400.9C'' and adding, in their place, the words ''FAA Order 7400.9D.''

Issued in Washington, DC, September 4, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–23471 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration

21 CFR Part 131

Stabilizers and Emulsifiers in Lowfat Milk and Skim Milk

CFR Correction

In title 21 of the Code of Federal Regulations, parts 100 to 169, revised as of April 1, 1996, make the following corrections:

1. On page 278, in § 131.135, the effective date was inadvertently removed. The omitted text should read as follows:

Effective Date Note: Paragraph (e)(1)(iv) of § 131.135 was revised at 45 FR 81737, Dec. 12, 1980, effective for compliance July 1, 1983. The effective date for compliance was stayed until further notice at 47 FR 11271, Mar. 16, 1982. Paragraph (e)(1)(iv) published at 42 FR 14360, Mar. 15, 1977, and set forth below is currently effective.

§ 131.135 Lowfat milk.

* * * * *

(e) * * *

(1) * * *

(iv) The phrase ''protein fortified'' or ''fortified with protein'' if the food contains not less than 10 percent milk derived nonfat solids.

* * * * *

2. On page 282, in § 131.143, the effective date was inadvertently removed. The omitted text should read as follows:

Effective Date Note: Paragraph (e)(1)(iii) of § 131.143 was revised at 45 FR 81737, Dec. 12, 1980, effective date for compliance July 1, 1983. The effective date for compliance was stayed until further notice at 47 FR 11271, Mar. 16, 1982. Paragraph (e)(1)(iii) published at 42 FR 14360, Mar. 15, 1977, and set forth below is currently effective.

§ 131.143 Skim milk.

* * * * *

(e) * * *

(1) * * *

(iii) The phrase ''protein fortified'' or ''fortified with protein'' if the food contains not less than 10 percent milk derived nonfat solids.

* * * * *

[FR Doc. 96–55565 Filed 9–12–96; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

28 CFR Part 0

[INS No. 1791–96; AG Order No. 2055–96]

RIN 1115–AE50

Agreements Promising Non-Deportation or Other Immigration Benefits

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule requires Federal prosecutors, law enforcement agencies, and other officials to obtain written consent from the Immigration and Naturalization Service (Service) when entering into a plea agreement, cooperation agreement, or similar agreement promising an alien favorable treatment by the Service. This rule ensures that favorable treatment under the immigration laws is extended only after a full consideration of its effect on overall immigration enforcement, alleviates confusion over the authority to enforce the immigration laws, and prevents the Service from being bound by agreements undertaken without its knowledge and approval. The rule codifies a long-standing position of the Department of Justice.

DATES: This interim rule is effective October 15, 1996. 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 1791–96 on all 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: Brad Glassman, Office of the General Counsel, Immigration and Naturalization Service, 425 ''I'' Street NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Considerable uncertainty has arisen as to whether plea agreements, cooperation agreements, and other agreements undertaken by agencies other than the Immigration and Naturalization Service (Service) may bind the Service in the exercise of its authority under the immigration laws. The Supreme Court has held that ''anyone entering into an agreement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority.'' *Federal Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380, 384 (1947). Accordingly, the Eleventh Circuit has held that ''officials at the INS may initiate deportation proceedings against a particular defendant without considering whether (a) * * * U.S. Attorney has promised the defendant non-deportation as part of a plea agreement.'' *San Pedro* v. *United States,* 79 F.3d 1065, 1071 (11th Cir. 1996).

However, two United States Courts of Appeals have taken a different view, relying on common law agency principles to enforce a plea agreement and a cooperation agreement against the Service. *Margalli-Olvera* v. *INS,* 43 F.3d 345 (8th Cir. 1994) (plea agreement); *Thomas* v. *INS,* 35 F.3d 1332 (9th Cir. 1994) (cooperation agreement). This rule will clarify which components within the Department of Justice have authority to bind the Department in matters concerning the immigration laws. The consent requirement ensures that favorable treatment under the immigration laws is extended only after a full consideration of its effect on overall immigration enforcement, preserves the authority of the Service to enforce the immigration laws, and prevents the Service from being bound by agreements undertaken without its knowledge and approval. *Cf. Thomas,* 35 F.3d at 1341 (''If the Attorney General wished to limit the incidental authority of United States Attorneys [to bind the Service without its consent], she could easily do so with a section in the Code of Federal Regulations * * *.''). This rule codifies a long-standing position of the Department of Justice.

The Attorney General's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the exception found at 5 U.S.C. 553(b)(3)(A) for ''rulers of agency organization, procedure, or practice.'' The Attorney General certifies, in accordance with 5 U.S.C. 605(b) (1995), that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a ''significant regulatory action'' within the meaning of E.O. 12866, section 3(f), and accordingly has not been reviewed by the Office of Management and Budget. This rule is not considered to have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 28 CFR Part 0

Authority delegations (government agencies), Government employees, Organization and functions (government agencies), Whistleblowing.

Accordingly, part 0 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. In part 0, subpart CC, a new § 0.197 is added to read as follows:

§ 0.197 Agreements, in connection with criminal proceedings or investigations, promising non-deportation or other immigration benefits.

The Immigration and Naturalization Service (Service) shall not be bound, in the exercise of its authority under the immigration laws, through plea agreements, cooperation agreements, or other agreements with or for the benefit of alien defendants, witnesses, or informants, or other aliens cooperating with the United States Government, except by the authorization of the Commissioner of the Service or the Commissioner's delegate. Both the agreement itself and the necessary authorization must be in writing to be effective, and the authorization shall be attached to the agreement.

Dated: September 9, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–23491 Filed 9–12–96; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Rate for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in October 1996.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest rates and factors. These interest rates and factors are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest rates and factors are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest rates and factors for valuing benefits in plans with valuation dates during October 1996.

For annuity benefits, the interest rates will be 6.30 percent for the first 20 years following the valuation date and 4.75 percent thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25 percent for the period during which benefits are in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The annuity and lump sum interest assumptions are unchanged from those in effect for September 1996.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during October 1996, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is hereby amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 36 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

Table I.—Annuity Valuations

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month	The values of i_t are:					
	i_t	For t =	i_t	For t =	i_t	For t =
* * *	*		*		*	*
Oct. 1996	.0630	1–20	.0475	>20	N/A	N/A

Table II.—Lump Sum Valuations

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1<y>n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i^1	i^2	i^3	n^1	n^2
*	*	*	*	*	*	*	*	*
36	10–1–96	11–1–96	5.25	4.50	4.00	4.00	7	8

Issued in Washington, DC, on this 9th day of September 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–23474 Filed 9–12–96; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM29–1–7272a; FRL–5549–9]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the Albuquerque/Bernalillo County State Implementation Plan (SIP) revision that contains regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993 (58 FR 63214). Specifically, the general conformity rules enable the Albuquerque/Bernalillo County Air Quality Control Board to review conformity of all Federal actions (see 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans) with the control strategy SIP's submitted for the nonattainment and maintenance areas within the boundary of Bernalillo County. This approval action is intended to streamline the conformity process and allow direct consultation among agencies at the local levels. The Federal actions by the Federal Highway Administration and Federal Transit Administration (under 23 U.S.C. or the Federal Transit Act) are covered by the transportation conformity rules under 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The EPA approved the Albuquerque/Bernalillo County transportation conformity SIP on November 8, 1995 (60 FR 56241).

The EPA is approving this SIP revision under sections 110(k) and 176 of the Clean Air Act (the Act). The rationale for the approval and other information are provided in this document.

DATES: This action is effective on November 12, 1996, unless adverse or critical comments are received by October 15, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the Albuquerque/Bernalillo County General Conformity SIP and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day:

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Air Pollution Control Division, Albuquerque Environmental Health Department, One Civic Plaza, Albuquerque, New Mexico 87103, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E., Air Planning Section (6PDL), Multimedia Planning and Permitting Division , Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the Act as amended in 1977 (Pub. L. 95–95). Although these provisions did not define conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP that has been approved or promulgated for the nonattainment or maintenance areas.

The 1990 Amendments of the Act expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the Act as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act requires EPA to promulgate criteria and procedures for determining conformity of all other Federal actions in the nonattainment or maintenance areas (actions other than those under Title 23 U.S.C. or the Federal Transit Act) to a SIP. The criteria and procedures developed for this purpose

are called ''general conformity'' rules. The rules pertaining to actions under Title 23 U.S.C. or the Federal Transit Act were published in a separate Federal Register notice on November 24, 1993 (see 58 FR 62188). The EPA published the final general conformity rules on November 30, 1993 (58 FR 63214) and codified them at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the EPA not later than November 30, 1994.

II. Evaluation of State's (Albuquerque/Bernalillo County) Submission

In response to the Federal Register notice of November 30, 1993, the Governor of New Mexico submitted a SIP revision which included the general conformity rules adopted by the Albuquerque/Bernalillo County Air Quality Control Board. Currently, the Albuquerque/Bernalillo area is nonattainment for carbon monoxide and has requested redesignation to attainment; however, the general conformity SIP revision is applicable to all nonattainment and maintenance classifications under the Act. The following paragraphs present the results of EPA's review and evaluation of the Albuquerque/Bernalillo County nonattainment area SIP revision.

The Albuquerque Environmental Health Department (AEHD) is the lead air agency for SIP development, adoption, and enforcement in the Bernalillo County carbon monoxide nonattainment area. The New Mexico Air Quality Control Act (NMAQCA) allows, by ordinance, ''A'' class counties (as defined in the New Mexico statute) and any municipality within an ''A'' class county to create a municipal, county, or joint air quality board to administer and enforce the provisions of the NMAQCA. The City of Albuquerque and Bernalillo County have jointly established such a board, namely Albuquerque/Bernalillo County Air Quality Control Board, for administration and enforcement of NMAQCA because Bernalillo County is an ''A'' class county. The AEHD is the regulatory and administrative agency for implementing and enforcing the air quality control regulations of the Board in the Bernalillo County nonattainment area.

On December 19, 1994, the Governor of New Mexico submitted a SIP revision on behalf of the Albuquerque/Bernalillo County Air Quality Control Board in compliance with 40 CFR part 51 subpart W that contains the general conformity rules. The SIP revision was adopted by the Board on November 9, 1994, after appropriate public participation and interagency consultation. The AEHD adopted the Federal general conformity rules verbatim with the exception of limited changes and additional definitions, where necessary, to create consistency with the local processes, procedures, and area specific terms or names. These minor modifications and additional clarifications do not in any way alter the effect, implementation and enforcement of the Federal conformity requirements in the Bernalillo County nonattainment area. The EPA has determined that AEHD's general conformity rule meets the Federal requirements and EPA is approving this SIP revision.

III. Final Action

The EPA is approving the general conformity SIP revision for the Albuquerque/Bernalillo County nonattainment area as submitted by the Governor of New Mexico on December 19, 1994. The EPA has evaluated this SIP revision and has determined that Albuquerque/Bernalillo County nonattainment area has fully adopted the provisions of the Federal general conformity rules in accordance with 40 CFR part 51 subpart W. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of these rules by the Albuquerque Environmental Health Department at the local level.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 12, 1996, unless adverse or critical comments concerning this action are submitted and postmarked by October 15, 1996. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received concerning this action will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective November 12, 1996.

IV. Administrative Requirements

A. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

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

B. Unfunded Mandates

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

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 176 of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition

of any mandate upon the private sector, the EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, the EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

C. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

D. Procedural Information

This action has been classified as a Table Three action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Ms. Mary Nichols, Assistant Administrator for Air and Radiation.

E. Petition for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 1996. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: July 24, 1996.

Allyn M. Davis,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(60) to read as follows:

§ 52.1620 Identification of Plan.

* * * * *

(c) * * *

(60) A revision to the New Mexico State Implementation Plan for General Conformity: Albuquerque/Bernalillo County Air Quality Control Regulation No. 43 ''General Conformity'' as adopted on November 9, 1994, and filed with the State Records and Archives Center on December 16, 1994, was submitted by the Governor on December 19, 1994.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Air Quality Control Regulation No. 43 ''General Conformity'' as adopted on November 9, 1994, and filed with the State Records and Archives Center on December 16, 1994.

[FR Doc. 96–23267 Filed 9–12–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[LA 25–1–6964a; FRL–5449–7]

Approval and Promulgation of Implementation Plans for Louisiana: General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action conditionally approves a revision to the Louisiana State Implementation Plan (SIP) that contains regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993. Specifically, the general conformity rules enable the Louisiana Department of Environmental Quality (LDEQ) to review conformity of all Federal actions (see 40 CFR part 51 subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans) with the control strategy SIP's submitted for the nonattainment and maintenance areas in Louisiana. This approval action is intended to streamline the conformity process and allow direct consultation among agencies at the local levels. The Federal actions by the Federal Highway Administration and Federal Transit Administration (under 23 U.S.C. or the Federal Transit Act) are covered by the transportation conformity rules under 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The EPA will act on the State's transportation conformity SIP under a separate Federal Register document.

The EPA is approving this SIP revision under sections 110(k) and 176 of the Clean Air Act (the Act). The rationale for the approval and other information are provided in this notice.

DATES: This action is effective on November 12, 1996, unless adverse or critical comments are received by October 15, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Air Quality Division, Louisiana Department of Environmental Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, Telephone: (504) 765–0219

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E., Air Planning Section (6PDL), Multimedia Planning and Permitting Division , Environmental Protection Agency, Region 6, 1445 Ross

Avenue, Dallas, Texas 75202, telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the Act as amended in 1977 (Public Law 95–95). Although these provisions did not define conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP that has been approved or promulgated for the nonattainment or maintenance areas.

The 1990 Amendments of the Act expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the Act as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act requires the EPA to promulgate criteria and procedures for determining conformity of all other Federal actions in the nonattainment or maintenance areas (actions other than those under Title 23 U.S.C. or the Federal Transit Act) to a SIP. The criteria and procedures developed for this purpose are called ''general conformity'' rules. The rules pertaining to actions under Title 23 U.S.C. or the Federal Transit Act were published in a separate Federal Register notice on November 24, 1993 (see 58 FR 62188). The EPA published the final general conformity rules on November 30, 1993 (58 FR 63214) and are codified under 40 CFR Part 51 Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the EPA not later than November 30, 1994.

II. Evaluation of State's Submission

A. Evaluation of the State Rules

In response to the Federal Register notice of November 30, 1993, the Governor of Louisiana submitted a SIP revision which included the general conformity rules adopted by the Louisiana Department of Environmental Quality. The general conformity SIP revision is applicable to all nonattainment and maintenance classifications under the Act. The following paragraphs present the results of EPA's review and evaluation of the Louisiana general conformity SIP revision.

On November 10, 1994, the Governor of Louisiana submitted a SIP revision in compliance with 40 CFR Part 51 Subpart W that contained the State general conformity rules. The SIP revision was adopted by the State and published in the Louisiana Register on November 20, 1994, after appropriate public participation and interagency consultation. The LDEQ adopted the Federal general conformity rules verbatim with the exception of limited changes and additional definitions, where necessary, to create consistency with the local processes, procedures, and area- specific terms or names. These minor modifications and additional clarifications do not in any way alter the effect, implementation, and enforcement of the Federal conformity requirements in the State nonattainment and maintenance areas except for the provision discussed in section II(B) of this notice.

B. Conditions and Commitments

Review of the State rules indicated that section 1405(B) of the State rule allows the State Administrative authority to approve changes to the emissions estimating methods and use of new or modified models in the air quality and conformity analyses. This is contrary to 40 CFR 51.859 of the EPA general conformity rule which recommends use of the EPA approved procedures and models, and retains the EPA's approval authority for any deviation from the recommended provisions. In addition, section 1411 of the State rule which contains identical requirements as EPA's 40 CFR 51.859, requires approval of the EPA Regional Administrator for use of the modified emissions estimating methods and models if they are deviations from the EPA's recommended procedures or models. Therefore, the EPA can not approve this SIP revision unless this inconsistency has been corrected in section 1405(B) of the State's general conformity rule.

After the EPA's consultation with the State, the State has agreed to modify section 1405(B) of its conformity rule by removing the inconsistency discussed above. In a letter dated December 5, 1995, from the Assistant Secretary of LDEQ to the EPA Region 6 Administrator, the State commits to make the necessary correction in section 1405(B) and submit a SIP revision to the EPA within twelve (12) months from the date of this document, September 15, 1997. The EPA accepted this commitment from the State because the EPA believes that the State has shown a good faith effort in complying with the SIP requirements and this minor inconsistency was not intentionally added to the regulations. The State's commitment letter will allow the EPA to proceed with a conditional approval while the State is preparing the appropriate corrections for submission of a SIP revision.

The EPA has determined that LDEQ's general conformity rule meets the Federal requirements except the provisions of section 1405(B) as cited above. Therefore, the EPA is conditionally approving this SIP revision until the State makes the appropriate corrections and submits a SIP revision before the date specified above. If the State does not submit a SIP revision for correction of section 1405(B) by the date specified in section II(B) of this notice, this conditional approval will automatically be converted to a disapproval on the date specified above and as further discussed in section III of this notice.

III. Final Action

The EPA is conditionally approving a revision to the Louisiana general conformity SIP revision based on the rationale elaborated in this action. The general conformity rule is applicable to all nonattainment and maintenance areas. The EPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal general conformity rules in accordance with 40 CFR Part 51 Subpart W, with one exception as noted in section II of this notice. The State has undertaken appropriate public participation and comprehensive interagency consultations during development and adoption of the rules at the local level.

The EPA is approving this SIP revision, based on the State's December 5, 1995, commitment letter and on the condition that the State will adopt and submit a revised general conformity rule which will contain the corrections detailed in this notice (see section II) within twelve months of this final approval action, but not later than September 15, 1997. If the State fails to submit a SIP revision, as committed in the letter of December 5, 1995, for correction of section 1405(B) by September 15, 1997, this conditional approval under section 110(k) will

automatically be converted to a disapproval on that date and the sanctions clock will begin. If the State does not submit a SIP, and the EPA does not approve the SIP on which the disapproval was based within 18 months of the disapproval, the EPA must impose the sanctions under section 179 of the Act.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 12, 1996, unless adverse or critical comments concerning this action are submitted and postmarked by October 15, 1996. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received concerning this action will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective November 12, 1996.

IV. Administrative Requirements

A. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Conditional approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the EPA certifies that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

If conditional approval is converted to a disapproval under Section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the EPA certifies that such a disapproval will not have a significant impact on a substantial number of small entities because it does not remove existing State requirements, nor does it substitute a new Federal requirement.

B. Unfunded Mandates

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

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 176 of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, the EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, the EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

C. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

D. Procedural Information

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 1996. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: July 24, 1996.

Allyn M. Davis,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(67) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(67) A revision to the Louisiana State Implementation Plan for General Conformity: LAC 33:III. CHAPTER 14. SUBCHAPTER A ''Determining Conformity of General Federal Actions to State or Federal Implementation Plan'' as adopted by the Louisiana Department of Environmental Quality Secretary and published in the Louisiana Register, Vol. 20, No. 11, 1268, November 20, 1994, was submitted by the Governor on November 10, 1994.

(i) Incorporation by reference.

(A) Louisiana General Conformity: LAC 33:III. CHAPTER 14. SUBCHAPTER A ''Determining Conformity of General Federal Actions to State or Federal Implementation Plan'' as adopted by the Louisiana Department of Environmental Quality Secretary and published in the Louisiana Register, Vol. 20, No. 11, 1268, November 20, 1994.

3. Section 52.994 is added to read as follows:

§ 52.994 Conditional approvals.

(a) General Conformity. A letter, dated December 5, 1995, from Assistant Secretary of the Louisiana Department of Environmental Quality to the EPA Regional Administrator, commits the State to make corrections in section 1405(B) for restoring the EPA's authority in certain sections of the rule. Specifically, the letter states that:

The State of Louisiana submitted a State Implementation Plan (SIP) for General Conformity on November 30, 1994. The SIP review conducted by EPA General Counsel identified an inconsistency with the federal rule.

EPA's General Counsel advised that under 40 CFR 51.859 and LAC 33:III.1411, administrative authority belongs to EPA; and clarifies that all requirements of Section 51.859 (State's 1411) are applicable to any analyses required in 40 CFR 51.859 (State's LAC 33:III.1405). To clarify that requirements of Section 1411 are applicable to Section 1405 and to correct the inconsistency, the sentence cited in EPA's review will be changed to read as follows: 'Emissions from federal actions must be determined using methods described in Section 1411 of this Subchapter.' Since Section 1411 gives administrative authority to EPA regional administrator, no further clarification will be needed.

The State commits to make the above rule change within one year from the Federal Register publication of final notice of conditional approval to Louisiana's General Conformity SIP.

(b) (reserved)

[FR Doc. 96–23264 Filed 9–12–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD96

Endangered and Threatened Wildlife and Plants; Listing of the Umpqua River Cutthroat Trout in Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) is adding the Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) to the List of Endangered and Threatened Wildlife. This measure, authorized by the Endangered Species Act of 1973 (Act), corresponds with a determination of endangered status for this species, as defined under the Act, by the National Marine Fisheries Service (NMFS) which has jurisdiction for this species.

EFFECTIVE DATE: September 9, 1996.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (703/358–2171).

SUPPLEMENTARY INFORMATION: In accordance with Reorganization Plan No. 4 of 1970, the NMFS, National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the decisions regarding the Umpqua River cutthroat trout under the Act. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The FWS is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The NMFS published its determination of endangered status for the Umpqua River cutthroat trout on August 9, 1996 (61 FR 41514). Accordingly, the FWS is now adding it to the List of Endangered and Threatened Wildlife as an endangered species. This addition is effective as of September 9, 1996, as indicated in the NMFS's determination. Because this action of the FWS is nondiscretionary, and in view of the public comment period provided by NMFS on the proposed listing (July 8, 1994; 50 FR 35089), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

The FWS has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act, as amended. A notice outlining the FWS's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Fish, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISH							
*	*	*	*	*	*		*
Trout, Umpqua River cutthroat.	*Oncorhynchus clarki clarki.*	U.S.A. (AK, CA, OR, WA), Canada.	Umpqua R. (U.S.A.—OR) naturally spawning pops.in mainstem and tributaries.	E	588	NA	NA
*	*	*	*	*	*		*

Dated: August 29, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–23451 Filed 9–12–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 090696G]

Atlantic Tuna Fisheries; Fishery Closure

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

ACTION: Closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) General category quota for the September period has been attained. Therefore, the General category fishery for the September period will be closed effective at 11:30 p.m. on September 9, 1996. This action is being taken to prevent overharvest of the adjusted 165 metric tons (mt) subquota for the September period. In addition, NMFS has determined that the Incidental other category has attained its 1996 annual quota. Therefore, the Incidental other category for 1996 will be closed effective September 9, 1996.

EFFECTIVE DATES: The closure of the General category for the September period is effective 11:30 p.m. local time on September 9, 1996, through September 30, 1996, and the closure of the Incidental other category is effective 11:30 p.m. local time on September 9, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

General Category Closure

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a quota of 159 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the General category quota during the period beginning September 1 and ending September 30. Due to an underage of 6 mt in the August subquota, the September subquota was adjusted to 165 mt. Based on reported catch and effort, NMFS projects that this revised quota has been reached. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT under the General category quota must cease at 11:30 p.m. local time September 9, 1996. The General category will reopen October 1, 1996 with a quota of 63 mt for the October-December period. Note that this October-December quota includes a 10–mt set aside for the New York Bight fishery.

Incidental Other Category Closure

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a quota of 1 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the Incidental other category quota over the period January 1 - December 31. Based on reported catch, NMFS projects that this quota has been reached. Therefore, retaining, possessing, or landing large medium or giant ABT under the Incidental other category quota must cease at 11:30 p.m. local time September 9, 1996.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 9, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23449 Filed 9–9–96; 4:39 pm]

BILLING CODE 3510–22–F

50 CFR Part 622

[Docket No. 96061317–6247–02; I.D. 050996C]

RIN 0648–AI71

Reef Fish Fishery of the Gulf of Mexico; Amendment 13

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 13 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 13 extends the red snapper vessel permit endorsement and trip limit system until implementation of either the individual transferrable quota (ITQ) system approved under Amendment 8 to the FMP or an alternate program to restrict access to

the commercial red snapper fishery, such as a limited license system. If neither option is possible, the vessel permit endorsement and trip limit system terminates on December 31, 1997. The intended effects of this rule are to stabilize the fishery and to provide for controlled harvest until a more comprehensive controlled access plan can be implemented.

EFFECTIVE DATE: September 15, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background information on the management of the commercial red snapper fishery and the rationale for the management measures in Amendment 13 were contained in the preamble to the proposed rule (61 FR 32422, June 24, 1996) and are not repeated here.

The availability of Amendment 13 for public comment was announced in the Federal Register on May 14, 1996 (61 FR 24267), and comments were invited through July 8, 1996. Public comments were invited on the proposed rule through July 8, 1996. NMFS approved Amendment 13 on August 9, 1996. One comment was received in support of Amendment 13 during the public comment periods on the amendment and the rule. Accordingly, the proposed rule is adopted as final with only the changes described below.

Comment and Response

Comment: The U.S. Fish and Wildlife Service provided a comment in support of Amendment 13.

Response: NMFS agrees.

Changes from the Proposed Rule

Since the proposed rule was published, NMFS has consolidated most of its fishery regulations for the Southeast Region into one set of regulations at 50 CFR part 622 (published on July 3, 1996, 61 FR 34930). Accordingly, the amendatory instructions in this final rule implementing Amendment 13 are amendments to part 622 rather than amendments to 50 CFR part 641, as were contained in the proposed rule. In § 622.4, paragraph (p) is added for clarity and consistency. The endorsement provisions contained in paragraph (p) are consistent with the original provisions established in emergency regulations published December 30, 1992 (57 FR 62237), and continued via subsequent regulations. Minor changes in language have been made to conform to the standards in part 622.

Classification

The Director, Southeast Region, NMFS, determined that Amendment 13 is necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (61 FR 32422, June 24, 1996) and are not repeated here. No comments were received concerning this certification. As a result, a regulatory flexibility analysis was not prepared.

In accordance with the FMP's framework procedure for adjusting annual management measures, NMFS has proposed to increase the commercial quota for red snapper and make this additional quota available to the commercial fishery as of September 15, 1996 (FR 42413, August 15, 1996). If NMFS, after considering the public comment, approves the increased 1996 quota for the commercial red snapper fishery, this fishery will still be subject to the ITQ system (established by Amendment 8) that requires fishermen to have ITQ coupons in order to fish for red snapper. As explained in the proposed rule for Amendment 13, NMFS is unable to implement the ITQ system for the foreseeable future. Therefore, unless the ITQ regulations are suspended by this final rule by September 15, the commercial fishery cannot reopen on that date in order to harvest the additional commercial quota. For these reasons, the Assistant Administrator for Fisheries, NOAA, has determined that this rule relieves a restriction within the meaning of section 553(d) of the Administrative Procedure Act. Therefore, the effective date of this rule is not delayed for 30 days.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 9, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.4, paragraphs (a)(2)(ix) and (p) are added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(ix) *Gulf red snapper.* Effective through December 31, 1997, as a prerequisite for exemption from the trip limit for red snapper specified in § 622.44(e)(1), a commercial vessel permit for Gulf reef fish with a red snapper endorsement must have been issued to the vessel and must be on board.

* * * * *

(p) *Gulf red snapper endorsements.* This paragraph (p) is effective through December 31, 1997.

(1) Based on documented historical red snapper landings from the Gulf of 5,000 lb (2,269 kg), round weight, or its equivalent in eviscerated weight, per year in 2 of the years 1990, 1991, and 1992, Gulf red snapper endorsements have been issued for vessels that have commercial permits for Gulf reef fish. In cases where a red snapper endorsement is issued based on the qualifications of an operator, the validity of that endorsement is conditioned on that named operator being aboard and in charge of the permitted vessel.

(2) A Gulf red snapper endorsement is invalid upon sale of the vessel; however, an owner of a vessel with a red snapper endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) Paragraph (p)(2) of this section notwithstanding—

(i) In the event that a vessel with a Gulf red snapper endorsement has a change of ownership that is directly related to the disability or death of the owner, the RD may issue a red snapper

endorsement, temporarily or permanently, with the commercial permit for Gulf reef fish that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial vessel permit for Gulf reef fish upon disability or death of an owner is considered a purchase of a permitted vessel and paragraph (m)(3) of this section applies regarding a commercial vessel permit for Gulf reef fish for the vessel under the new owner.)

(ii) In the event of the disability or death of an operator whose presence aboard a vessel is a condition for the validity of a Gulf red snapper endorsement, the RD may revise and reissue an endorsement, temporarily or permanently, to the permitted vessel. Such revised endorsement will contain the name of a substitute operator specified by the operator or his/her legal guardian, in the case of a disabled operator, or by the will or executor/administrator of the estate, in the case of a deceased operator. As was the case with the replaced endorsement, the presence of the substitute operator aboard and in charge of the vessel is a condition for the validity of the revised endorsement. Such revised endorsement will be reissued only with the concurrence of the vessel owner.

§ 622.7 [Amended]

3. In § 622.7, in paragraph (i)(5), the concluding words ''introductory text'' are removed.

§ 622.16 [Suspended]

4. Section 622.16 is suspended indefinitely.

5. In § 622.44, paragraph (e) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(e) *Gulf red snapper.* This paragraph (e) is effective through December 31, 1997.

(1) Except as provided in paragraph (e)(2) of this section, the trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish is 200 lb (91 kg), round or eviscerated weight.

(2) The trip limit for red snapper in or from the Gulf for a vessel that has on board a valid commercial permit for Gulf reef fish and a valid Gulf red snapper endorsement is 2,000 lb (907 kg), round or eviscerated weight.

(3) As a condition of a commercial vessel permit for Gulf reef fish, as required under § 622.4(a)(2)(v), without regard to where red snapper are harvested or possessed, a vessel with such permit—

(i) May not possess red snapper in or from the Gulf in excess of the appropriate vessel trip limit, as specified in paragraph (e)(1) or (e)(2) of this section.

(ii) May not transfer at sea red snapper in or from the Gulf.

[FR Doc. 96–23530 Filed 9–10–96; 3:00 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 090996A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Eastern Regulatory Area of the Gulf of Alaska. This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the Eastern Regulatory Area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), September 9, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Pacific ocean perch TAC for the Eastern Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 2,366 metric tons (mt). The directed fishery for Pacific ocean perch in the Eastern Regulatory Area was closed under § 679.20(d)(iii) on July 11, 1996, (61 FR 37225, July 17, 1996) and reopened on July 31, 1996 (61 FR 40158, August 1, 1996).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 679.20(d)(1), that the Pacific ocean perch TAC in the Eastern Regulatory Area soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 2,066 mt, with consideration that 300 mt will be taken as incidental catch in directed fishing for other species in the Eastern Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under § 679.20 and is exempt from OMB review under E.O. 12866.

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

Dated: September 9, 1996.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23448 Filed 9–9–96; 4:33 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 179
Friday, September 13, 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

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Forage Production Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of forage production. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of producers, add an optional Forage Production Winter Coverage Endorsement, and combine the current Forage Production Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business November 12, 1996 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 12, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m.–4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 5, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

The amendments sent forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Forage Production Crop Insurance Provisions; and Forage Production Winter Coverage Endorsement.'' The information to be collected includes: a crop insurance application and acreage report. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of forage production that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, PO Box 2415, STOP 0572, U.S. Department of Agriculture, Washington, DC 20013–2415. Telephone (202) 690–2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a

statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured may use actual records of production or receive a transitional yield which does not require the maintenance of production records. If the insured elects to use actual records of acreage and production as the basis for the production guarantee, the insured must report this information on a yearly basis. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and Farm Service Agency (FSA) offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), two new sections: 7 CFR 457.117, Forage Production Crop Insurance Provisions; and 457.127, Forage Production Winter Coverage Endorsement. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace the current provisions for insuring forage production found at 7 CFR part 415. Upon publication of the Forage Production Crop Provisions and the Forage Production Winter Coverage Endorsement as a final rule, the current provisions for insuring forage production will be removed from 7 CFR part 415 and that part will be reserved.

This rule makes minor editorial and format changes to improve the Forage Production Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring forage production as follows:

1. Section 1—Add definitions for the terms ''air-dry forage,'' ''days,'' ''good farming practices,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''ton,'' ''written agreement,'' and ''year of establishment'' for clarification purposes. Add a definition for the term ''adequate stand'' to specify that the minimum number of plants required for insurance to attach will be contained in the Special Provisions. The definition also allows for regional differences in plant populations. Add a definition for the term ''fall-planted'' to specify that a forage crop planted after June 30 will be considered fall-planted. Add a definition for the term ''spring-planted'' to specify that forage planted before July 1 year will be considered spring-planted. Revise the definition for the term ''forage'' to recognize the various types or mixtures of forage grown throughout the United States. Revise the definition for the term ''harvest'' to specify that grazing will not be considered harvested because insurance coverage is not provided for forage that is grown for the purpose of grazing.

2. Section 2—Clarify that optional units are not available for forage production.

3. Section 3(a)—Clarify that an insured may select only one price election for all the forage production in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the insured may select one price election for each forage type designated in the Special Provisions.

4. Section 3(b)—Clarify that an insured must report, by the production reporting date, the total production harvested from insurable acreage for all cuttings for each unit.

5. Section 4—Change the contract change date from August 15 to June 30. This change eliminates the distribution of actuarial materials separately for this crop, thereby simplifying the crop insurance program and reducing administrative overhead costs.

6. Section 5—Change the cancellation and terminations dates from November 30 to September 30. The sales closing date for the 1998 crop year is also changed to September 30. This change will allow the insurer the opportunity to inspect any forage acreage under more favorable weather conditions to determine that an adequate stand exists prior to accepting an application.

7. Section 6—Specify that an insured must submit separate acreage reports for acreage insured under the Forage Production Winter Coverage Endorsement and for all other forage acreage on or before the acreage reporting dates contained in the Special Provisions. Separate fall and spring acreage reports are necessary because

insurance attaches in the fall for forage acreage insured under the Forage Production Winter Coverage Endorsement and in the spring for all other forage acreage.

8. Section 7(b)—Clarify that forage must have an adequate stand before insurance will attach. Eliminate the provision that allows overage stands of forage to be insured by written agreement. This change eliminates coverage on overage forage acreage that has significantly lower production yields.

9. Section 8—Provide different calendar dates for the beginning of the insurance period for acreage covered under the Forage Production Winter Coverage Endorsement. This change is necessary due to the addition of the new Forage Production Winter Coverage Endorsement.

10. Section 12—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for and duration of written agreements.

11. Section 457.127—Add a new Forage Production Winter Coverage Endorsement. This endorsement will provide optional winter coverage in any county for which the actuarial table designates forage production premium rates when the insured elects the endorsement by the sales closing date. Current regulations allow winter coverage as a part of the basic policy, which affects the premium rates for all persons who insure forage production. Allowing winter protection only when the insured elects the Forage Production Winter Coverage Endorsement will result in separate premium rates for insureds who elect winter coverage.

List of Subjects in 7 CFR Part 457

Crop insurance, Forage production.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1998 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows.

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. 7 CFR part 457 is amended by adding new §§ 457.117 and 457.127 to read as follows:

§ 457.117 Forage Production Crop Insurance Provisions.

The Forage Production Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Forage Production Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions, and these crop provisions will control the Basic Provisions.

1. Definitions

Adequate stand—A population of live forage plants that equals or exceeds the minimum required number of plants per square foot as shown in the Special Provisions.

Air-dry forage—Forage that has dried in windrows by natural means to less than eighteen percent (18%) moisture before being put into stacks or bales.

Crop year—The period from the date insurance attaches until harvest is normally completed, which is designated by the calendar year in which the majority of the forage is normally harvested.

Cutting—Severance of the forage plant from the land for the purpose of livestock feed.

Days—Calendar days.

Fall planted—A forage crop planted after June 30.

Forage —Planted perennial alfalfa, perennial red clover, perennial grasses, or a mixture thereof, as shown in the actuarial table.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Removal of forage from the windrow or field. Grazing will not be considered harvested.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Production guarantee (per acre)—The number of tons determined by multiplying the approved yield per acre times the coverage level percentage you elect.

Spring planted—A forage crop planted before July 1.

Ton—Two thousand (2,000) pounds avoirdupois.

Written agreement—A written document that alters designated terms of a policy in accordance with section 12.

Year of establishment—The period between seeding and when the forage crop has developed an adequate stand. Insurance during the year of establishment may be available under the forage seeding policy. Insurance under this policy does not attach until after the year of establishment. The year of establishment is determined by the date of seeding. A forage crop planted before July 1 is considered as spring planted and the year of establishment is designated by the calendar year in which seeding occurred. A forage crop planted after June 30 is considered as fall planted and the year of establishment is designated by the calendar year after the year in which the crop was planted.

2. Unit Division

Optional units are not available for forage production. See the definition of unit contained in section 1 (Definitions) of the Basic Provisions (§ 457.8).

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may only select one price election for all the forage in the county insured under this policy unless the Special Provisions provide different price elections by type. If the Special Provisions provide different price elections by type, you may select one price election for each forage type. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent (100%) of the maximum price election for a specific type, you must also choose 100 percent (100%) of the maximum price election for all other types.

(b) You must report the total production harvested from insurable acreage for all cuttings for each unit by the production reporting date.

(c) Separate guarantees will be determined by forage type, as applicable.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is June 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are September 30.

6. Report of Acreage

In addition to section 6 of the Basic Provisions (§ 457.8), you must submit separate acreage reports for acreage insured under the Forage Production Winter Coverage Endorsement and for all other insurable forage acreage.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the forage in the

county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That is planted for harvest as livestock feed; and

(3) That is grown after the year of establishment.

(b) In addition to the crop listed as not insured in section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we will not insure any forage that:

(1) Does not have an adequate stand at the beginning of the insurance period;

(2) Is grown with a non-forage crop; or

(3) Exceeds the age limitations for forage stands contained in the Special Provisions.

8. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(a) Insurance attaches on acreage with an adequate stand on the later of the date we accept your application or the applicable calendar dates listed below:

(1) For the first and subsequent calendar years following the year of establishment, except as otherwise provided in subsection (a)(2) for:

(i) California—February 1;

(ii) Colorado, Idaho, Nebraska, Nevada, Oregon, Utah, and Washington—April 15;

(iii) Iowa, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Wyoming, and all other states—May 22;

(2) The calendar date specified in the Forage Production Winter Coverage Endorsement for acreage insured under such endorsement.

(b) Insurance ends at the earliest of:

(1) Total destruction of the forage crop;

(2) Removal from the windrow or the field for each cutting;

(3) Final adjustment of a loss;

(4) The date grazing commences on the forage crop;

(5) Abandonment of the forage crop; or

(6) The following dates of the crop year:

(i) All states except California—October 15;

(ii) California—December 31.

(c) In order to obtain year round coverage for a calendar year, you must purchase the Forage Production Winter Coverage Endorsement (§ 457.127).

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss not covered in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage that occurs after removal from the windrow.

10. Duties in the Event of Damage or Loss

In addition to your duties contained in section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you discover any insured forage is damaged, or if you intend to claim an indemnity on any unit, you must give notice:

(a) Of probable loss at least 15 days before the beginning of any cutting or immediately if probable loss is discovered after cutting has begun; and

(b) At least 5 days before grazing of insured forage begins. Such notice must include the number of acres harvested and tons produced from each unit.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records for any unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the acreage for each type, as provided in the Special Provisions, times its respective production guarantee;

(2) Multiplying each product of paragraph (1) times the respective price election;

(3) Totaling the results of each crop type from paragraph (2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 11(c)) times its respective price election;

(5) Totaling the results of each crop type from paragraph (4);

(6) Subtracting the result of paragraph (5) from the total in paragraph (3); and

(7) Multiplying the result in paragraph (6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) When forage is harvested as other than air-dry forage, the production to count will be adjusted to the equivalent of air-dry forage.

(e) Any harvested production from plants growing in the forage will be counted as forage on a weight basis.

(f) In addition to the provisions of section 15 (Production Included in Determining Indemnities) of the Basic Provisions (§ 457.8), we may determine the amount of production of any unharvested forage on the basis of our field appraisals conducted after the normal time for each cutting for the area.

12. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

§ 457.127 Forage Production Winter Coverage Endorsement.

The provisions of the Forage Production Winter Coverage Endorsement for the 1998 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Forage Production Winter Coverage Endorsement

In return for payment of the additional premium designated in the actuarial table,

the Common Crop Insurance Policy Basic Provisions (§ 457.8) and the Forage Production Crop Insurance Provisions (§ 457.117) are amended to incorporate the following terms and conditions:

(a) For this Endorsement to be effective, you must have the Common Crop Insurance Policy Basic Provisions (§ 457.8) and the Forage Production Crop Insurance Provisions (§ 457.117) in force and you must comply with all terms and conditions contained therein.

(b) This Endorsement is not available for forage crops insured under a Catastrophic Risk Protection Endorsement.

(c) You must elect this Endorsement on your application or on a form approved by us, for coverage under this Endorsement, on or before the sales closing date specified in the Special Provisions for the crop year in which you wish to insure your forage under this Endorsement.

(d) This Endorsement is available for the following acreage in all counties for which the actuarial table designates forage production premium rates:

(1) Fall planted acreage, for the first and subsequent crop years following the year of establishment; and

(2) Spring planted acreage, for the second and subsequent crop years following the year of establishment.

(e) Under this Endorsement, the insurance period will be as follows:

(1) Insurance will attach on acreage with an adequate stand on the later of the date we accept your application or the applicable calendar dates following the end of the insurance period for the previous crop year as listed below:

(i) For all states except California—October 16;

(ii) For California—January 1.

(2) Insurance will end on the earliest of:

(i) Total destruction of the forage crop;

(ii) Removal from the windrow or the field for each cutting;

(iii) Final adjustment of the loss;

(iv) Abandonment of the forage crop;

(v) The date grazing commences on the forage crop; or

(vi) The following dates of the crop year:

(A) All states except California—October 15;

(B) California—December 31.

(f) This is a continuous Endorsement and it will remain in effect for as long as your forage production policy remains in effect or you cancel this coverage in accordance with paragraph (g).

(g) This Endorsement may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this Endorsement is to be effective.

Signed in Washington, DC, on September 5, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–23497 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–FA–P

7 CFR Part 457

RIN 0563–AB54

Common Crop Insurance Regulations; Cranberry Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') proposes specific crop provisions for the insurance of cranberries. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Cranberry Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business November 12, 1996, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 12, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, SW., Washington, DC., 8:15 a.m.–4:45 p.m., est, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926–3834.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 30, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Cranberry Crop Insurance Provisions.'' The information to be collected includes: a crop insurance application and acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of cranberries that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, PO Box 2415, STOP 0572, U.S. Department of Agriculture, Washington, DC 20013–2415, telephone (202) 690–2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104.4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured may use actual records of production or receive a transitional yield which does not require the maintenance of production records. If the insured elects to use actual records of acreage and production as the basis for the production guarantee, the insured must report this information on a yearly basis. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and Farm Service Agency (FSA) offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C § 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.132, Cranberry Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace the current provisions for insuring cranberries found at 7 CFR 401.127 (Cranberry Endorsement). Upon publication of the Cranberry Crop Provisions as a final rule, the current provisions for insuring cranberries will be removed from § 401.127 and that section will be reserved.

This rule makes minor editorial and format changes to improve the Cranberry Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring cranberries as follows:

1. Section 1—Add definitions for the terms ''days,'' ''good farming practices,'' ''irrigated practice,'' ''production guarantee,'' and ''written agreement'' for clarification purposes.

2. Section 2—Revise the unit language for clarity. There is no change in the unit structure.

3. Section 3(b)—Specify that the producer must report any damage, removal of vines, and change in practices that may reduce yields. If the producer fails to notify the insurance provider of any action or occurrence that may reduce yields from previous levels, the insurance provider will reduce the production guarantee at any time it becomes aware of any damage, removal of vines, or change in practices. This requirement is necessary to advise the insurer of circumstances that may require adjustment of the actual production history yields that are used to determine the insurance guarantee.

4. Section 7—Clarify that if the application is accepted after November 20, insurance will not attach until the 10th day after the application is received by the insurance provider. Provide policy guidelines for attachment of insurance when insurable acreage is acquired or relinquished. The guidelines are consistent with existing agency practice as contained in internal agency handbooks.

5. Section 8(b)(1)—Clarify that disease and insect infestations are excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or causes disease or insect infestation for which no effective

control mechanism is available. These exclusions are added so that insurance coverage is not provided for causes of loss that could be prevented. Also clarify that the inability to market the cranberries for any reason other than actual physical damage is not a covered cause of loss.

6. Section 9—Add provisions that require an insured to notify the insurer of probable loss at least 15 days before the beginning of harvesting or immediately if discovered after harvesting has begun so an inspection can be made. The provisions also prohibit the insured from selling or otherwise disposing of any damaged production until the earlier of 15 days from request or when the insurer provides written consent to do so. This was changed to standardize the perennial crop policies and is needed to assure accurate determinations of the insurance guarantee.

7. Section 11—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for and duration of written agreements.

List of Subjects in 7 CFR Part 457

Crop insurance, Cranberry.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1998 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506 (1), and 1506(p).

2. 7 CFR part 457 is amended by adding a new § 457.132 to read as follows:

§ 457.132 Cranberry Crop Insurance Provisions

The Cranberry Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Cranberry Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions, and these crop provisions will control the Basic Provisions.

1. Definitions

Barrel—100 pounds of cranberries.

Days—Calendar days.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The picking of cranberries from the vines for the purpose of removal from the land.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by an overhead solid set irrigation system with the intention of providing the quantity of water needed to prevent frost and to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Non-contiguous land—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Production guarantee (per acre)—The number of barrels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Written agreement—A written document that alters designated terms of a policy in accordance with section 11.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units must be identified on the acreage report for each crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must be located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the cranberries in the county insured under this policy.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(1) Any damage, removal of vines, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The age of the vines; and

(3) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: removal of vines, damage, and change in practices on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the cranberries in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for harvest as cranberries;

(c) That are grown in a bog that, if inspected, is considered acceptable by us; and

(d) That are grown on vines that have reached at least the fourth growing season after setout, unless a written agreement provides for earlier coverage.

7. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year, except that for the first crop year, if the application is accepted by us after November 20, insurance will attach on the 10th day after the application is received in your insurance provider's local office.

(2) The calendar date for the end of the insurance period for each crop year is November 20.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of cranberries on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium will be due for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties; and

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date.

8. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the bog;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Cause of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available; or

(2) Inability to market the cranberries for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market the cranberries due to quarantine, boycott, or refusal of any person to accept production.

9. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8):

(a) If you discover any insured units damaged, of if you intend to claim an indemnity on any unit, you must give us notice of probable loss:

(1) At least 15 days before the beginning of any harvesting, or

(2) Immediately if probable loss is discovered after harvesting has begun.

(b) You must not sell or dispose of the damaged crop until after the earlier of 15 days from request or when we give you written consent to do so.

(c) If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting from this total, the dollar amount obtained by multiplying the total production to count (see subsection 10(c)) by the price election; and

(4) Multiplying this result by your share.

(c) The total production to count (in barrels) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) Damaged solely by uninsured causes; or

(C) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general to the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(3) Harvested production and potential unharvested production which, due to insurable causes, does not meet, or would not if properly handled meet, the United States Standards for Fresh Cranberries for Processing, and has a value of less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(i) Dividing the market value per barrel of such cranberries by the market price per barrel for cranberries meeting the minimum requirements; and

(ii) Multiplying the result by the number of barrels of such cranberries.

11. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 11(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on September 9, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–23498 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–FA–P

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7 CFR Part 457

Common Crop Insurance Regulations; Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of fresh market tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business October 15, 1996, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 12, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, 8:15 a.m.–4:45 p.m., est Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 15, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions.'' The information to be collected includes: a crop insurance application and an acreage report. Information collected from the application and acreage report and is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of fresh market tomatoes that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

Comments should be submitted for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, United States Department of Agriculture, Farm Service Agency, Advisory and Corporate Operations Staff, Regulatory Review Group, P.O. Box 2145, STOP 0572, Washington, D.C. 20013–2415, telephone (202) 690–2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production or receive an assigned yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.128, Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions. The new provisions will be effective for the 1997 and succeeding crop years. These provisions will supersede and replace the current provisions for insuring fresh market tomatoes found at 7 CFR part 454 (Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations).

By separate rule, FCIC will revise 7 CFR part 454 to restrict its effect through the 1997 crop year and later remove that part.

This rule makes minor editorial and format changes to improve the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring fresh market tomatoes as follows:

1. Section 1—Add definitions for the terms ''carton,'' ''days,'' ''direct marketing,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''planting period,'' ''practical to replant,'' ''production guarantee (per acre),'' ''row width,'' and ''written agreement'' for clarification. Delete the definition of ''county'' so that the definition of ''county'' contained in the Basic Provisions (§ 457.8) will be applicable for fresh market tomatoes. The definition of county in part 454 includes additional land located in a local producing area bordering on the county. The current definition will require such land to be insured using the actuarial materials for the county where the land is located.

2. Section 2—Add a provision for dividing a basic unit by planting period if spring and fall planting periods are provided in the Special Provisions.

3. Section 3—Specify that the insured may select only one price election for all the tomatoes in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the insured may select one price election for each tomato type designated in the Special Provisions. Each price election chosen for each type must have the same percentage relationship to the maximum price offered by the insurance provider.

4. Section 4—Change the contract change date from November 30 to September 30 for counties with the new January 15 cancellation date to assure adequate time for producers to become familiar with any policy changes.

5. Section 5—Change the cancellation and termination dates from February 15 to January 15 and from April 15 to March 15 to be consistent with the movement of the sales closing dates as required by the Federal Crop Insurance Reform Act.

6. Section 6—Add a provision to specify that the insured must report all the information required in section 6 of the Basic Provisions by the acreage reporting date for each planting period, if spring and fall planting periods are allowed in the Special Provisions.

7. Section 7—Add a provision to specify that when computing the premium, the share at the time of each planting will be used in the premium calculation.

8. Section 8—Add a provision to specify that plum type tomatoes are not insurable. Cherry type tomatoes are already excluded from insurance coverage. The current provisions are not compatible with the characteristics of these types of tomatoes. Also add a provision to require that the tomato crop be planted within the applicable spring or fall planting periods to be insurable.

9. Section 9(b)(4)—Add a provision to specify that we will not require the soil to be fumigated or nematicide applied to acreage on which tomatoes were planted within the last 2 years as long as the tomatoes were destroyed prior to reaching the 2nd stage or if otherwise specified in the Special Provisions. Fumigation or application of a nematicide is not necessary if the crop was destroyed prior to reaching the stage when such problems would be apparent.

10. Section 10—Add a provision to specify that coverage begins when the tomatoes are planted in each planting period if spring and fall planting periods are authorized in the Special Provisions.

11. Section 11(b)(2)—Amend the provision specifying that loss of production due to disease or insect infestation is not insurable, to make these causes of loss insurable if adverse weather prevents the proper application of control measures; causes properly applied control measures to be ineffective; or causes disease or insect infestation for which no effective control mechanism is available in order to provide coverage in those circumstances when such damage is legitimately beyond the control of the insured.

12. Section 12—Add a provision permitting one replanting payment per planting period instead of one replanting payment per crop year since the crop planted in each planting season is effectively considered as a separate crop.

13. Section 14—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modification of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for, and duration of, written agreements.

List of Subjects in 7 CFR Part 457

Crop Insurance, tomato.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1997 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p)

2. 7 CFR part 457 is amended by adding a new § 457.128 to read as follows:

§ 457.128 Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions

The Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Fresh Market Tomato Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Acre—43,560 square feet of land on which the row width does not exceed six feet, or; if the row width exceeds six feet, the land area on which at least 7,260 linear feet of tomato plants are planted.

Carton—A standard container that contains 25 pounds of fresh tomatoes unless otherwise provided in the Special Provisions.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Picking of marketable tomatoes.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Mature green tomato—A tomato that:

(a) Has a heightened gloss due to a waxy skin that cannot be torn by scraping;

(b) Has well formed jelly-like substance in the locules;

(c) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and

(d) Shows no red color.

Planting—Transplanting the tomato plants into the field.

Planting period—The period of time designated in the Special Provisions during which the tomatoes must be planted to be considered spring or fall planted tomatoes.

Plant stand—The number of live plants per acre before any damage occurs.

Potential Production—The number of cartons per acre of mature green or ripe tomatoes with classification size of 6×7 ($2^{8}/_{32}$inch minimum diameter) or larger which the tomato plants would have produced by the end of the insurance period.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. In counties that do not have both spring and fall planting periods, it will not be considered practical to replant after the final planting date unless replanting is generally occurring in the area. In counties that have spring and fall planting periods, it will not be considered practical to replant after the final planting date for the planting period in which the crop was initially planted.

Prevented planting—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

Production guarantee (per acre)—The number of cartons determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Replanting—Performing the cultural practices necessary to replace the tomato plants and then replacing the tomato plants in the insured acreage with the expectation of growing a successful crop.

Ripe tomato—A tomato that meets the definition of a mature green tomato, except that the tomato shows some red color.

Row width—The widest distance from the center of one row of plants to the center of an adjacent row of plants.

Written agreement—A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) A unit, as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), may be divided into basic units by planting period if spring and fall planting periods are provided for in the Special Provisions. Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(a) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit; and

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us.

(b) Each optional unit must meet one or more of the following criteria, as applicable:

(1) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated

optional unit, they will be a part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the tomatoes in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each tomato type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose one hundred percent (100%) of the maximum price election for one type, you must also choose one hundred percent (100%) of the maximum price election for all other types.

(b) The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantee. The stages and production guarantees are as follows:

Stage	Percent of stage 4 (final stage) production guarantee	Length of time
1	50	From planting until qualifying for stage 2.
2	75	From the earlier of stakes driven, one tie and pruning, or 30 days after planting until qualifying for stage 3.
3	90	From the earlier of the end of stage 2 or 60 days after planting until qualifying for stage 4.
4	100	From the earlier of 75 days after planting or the beginning of harvest.

(c) Any acreage of tomatoes damaged to the extent that producers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though you continue to care for the tomatoes. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is September 30 preceding the cancellation date for counties with a January 15 cancellation date and December 31 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State	Cancellation and termination date
California, Florida, Georgia, and South Carolina.	January 15.
All other states	March 15.

6. Report of Acreage

(a) In addition to the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the row width of all the tomatoes grown in the county.

(b) If spring and fall planting periods are allowed in the Special Provisions you must report all the information required by section 6 of the Basic Provisions (§ 457.8) by the acreage reporting date for each planting period.

7. Annual Premium

In lieu of provisions contained in the Basic Provisions (§ 457.8), for determining premium amounts, the annual premium is determined by multiplying the final stage production guarantee by the price election, by the premium rate, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factor contained in the Special Provisions.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are transplanted tomatoes planted for harvest as fresh market tomatoes (cherry and plum types are excluded);

(c) That are planted within the spring or fall planting dates, as applicable, specified in the Special Provisions; and

(d) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

9. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. Unavailability of plants will not be considered a valid reason for failure to replant.

(b) We do not insure any acreage of tomatoes:

(1) Grown by any person if the person had not previously:

(i) Grown fresh market tomatoes for commercial sales; or

(ii) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.

(2) Grown for direct marketing;

(3) That does not meet the rotation requirements contained in the Special Provisions;

(4) On which tomatoes, peppers, eggplants, or tobacco have been grown within the previous two years unless the soil was fumigated or nematicide was applied before planting the tomatoes, except that this limitation does not apply in Pennsylvania, to acreage planted to tomatoes within the last 2 years when the tomatoes were destroyed prior to reaching the 2nd stage, or if otherwise specified in the Special Provisions;

(5) That are not subject to an agreement (packing contract) between you and a packer unless you have access to packing facilities. Such agreement must be executed before the acreage reporting date.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(a) Coverage begins on each unit, or part of a unit for units with spring and fall planting periods, when the tomatoes are planted.

(b) Coverage will end on any insured acreage at the earliest of:

(1) Total destruction of the tomatoes;

(2) Discontinuance of harvest;

(3) The date harvest should have started on any acreage which was not harvested;

(4) 120 days after the date of transplanting or replanting;

(5) Completion of harvest; or

(6) Final adjustment of a loss.

11. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Damage that occurs or becomes evident after the tomatoes have been harvested; or

(2) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available.

12. Replanting Payment

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the crop is damaged by an insurable cause of loss and the acreage to be replanted has sustained a loss in excess of fifty percent (50%) of the plant stand.

(b) The maximum amount of the replanting payment per acre will be 70 cartons multiplied by your price election, and by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8) that permit only one replanting payment each crop year, when spring and fall planting periods are contained in the Special Provisions, you may be eligible for one replanting payment for acreage planted during each planting period within the crop year.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable by its respective production guarantee and by the factor for the applicable stage;

(2) Multiplying the results of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 13(c)) by the respective price election;

(5) Totaling the results of section 13(b)(4);

(6) Subtracting this result of section 13(b)(5) from the results in section 13(b)(3); and

(7) Multiplying the result of section 13(b)(6) by your share.

(c) The total production to count (in cartons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Potential production lost due to uninsured causes;

(iii) Unharvested production of mature green and ripe tomatoes with classification size of 6×7 ($2^{8}/_{32}$ inch minimum diameter) or larger remaining after harvest is discontinued;

(iv) Potential production on unharvested acreage and potential production on acreage when harvest has not been completed;

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage:

(i) That is marketed, regardless of grade; and

(ii) That is unmarketed and grades eighty-five percent (85%) or better U.S. No. 1 with classification size of 6×7 ($2^{8}/_{32}$ inch minimum diameter) or larger.

14. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);.

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on September 4, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–23455 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–FA–P

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV–96–981–4PR]

Almonds Grown in California; Interest and Late Payment Charges on Past Due Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on implementing interest and late payment charges on past due assessments owed under the almond marketing order. The marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule would allow the Board to implement authority contained in the marketing order to impose late payment and interest charges for past due assessments owed the Board by handlers, and should contribute to the efficient administration of the program.

DATES: Comments must be received by October 15, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–1509, Fax # (202) 720–5698; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906. Small businesses may request information on

compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090- 6456; telephone (202) 720–2491; Fax # (202) 720–5698.

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

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

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

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

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

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

There are approximately 115 handlers and approximately 7,000 producers of almonds in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposal invites comments on implementing regulations concerning collection of assessments under the California almond marketing order. This rule would allow the Board to impose interest and late payment charges on past due assessment accounts. Although the vast majority of handlers are timely in remitting their assessments, there are a few who are not. This rule would provide incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It would not impose any costs on handlers who pay their assessments on time, and should contribute to the efficient administration of the program. Therefore, the AMS has determined that this action will not have a significant economic effect on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Section 981.81 of the almond marketing order provides authority for the Board to assess handlers of California almonds to fund authorized activities. This section was recently amended to authorize the Board, with the approval of the Secretary, to impose interest and late payment charges on past due assessments.

The Board met on July 24, 1996, and unanimously recommended implementing the order authority regarding interest and late payment charges. Although most handlers remit assessments in a timely manner, historically there have been a few who do not. Those handlers are able to reap the benefits of Board programs at the expense of others. In addition, they are able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs. In effect, this provides handlers with an interest free loan.

Implementing interest and late payment charges would provide an incentive for handlers to pay assessments on time, which would improve compliance with the order. It would decrease the number of actions taken against handlers failing to pay assessments on time through administrative remedies or the Federal courts. These remedies, currently the only recourse against handlers who fail to pay assessments, can be costly and time consuming and often add to an already overburdened legal system. This rule would remove any economic advantage gained by those handlers who do not pay on time, thus helping to ensure a program that is equitable to all. This is also consistent with standard business practices.

For 1996–97 crop year assessments, the Board recommended interest charges of one and one half percent per month for assessments 30 days or more late. In addition, assessments remaining unpaid for 60 days would be charged a 10 percent late payment charge. For prior crop year assessments past due, the Board recommended an interest rate of one and one half percent per month and a late payment charge of 20 percent, after handlers are provided an initial grace period to come into compliance.

While the Board's recommendation contemplated calculating interest and late payment charges from the original invoice date, the Department has determined that no interest or late payment charges would accrue prior to the effective date of this rule. Interest or late payment charges would only be applicable to assessments accrued and billed after the effective date of this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

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

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

PART 981—ALMONDS GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

2. A new § 981.481 is proposed to be added to read as follows:

§ 981.481 Interest and late payment charges.

(a) Pursuant to § 981.81, the Board shall impose an interest charge on any handler whose assessment payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice

date shown on the handler's statement. The interest charge shall be a rate of one and one half percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30 day payment period.

(b) In addition to the interest charge specified in paragraph (a) of this section, the Board shall impose a late payment charge on any handler whose payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The late payment charge shall be 10 percent of the unpaid balance.

Dated: September 6, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–23456 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 96–033–1]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis regulations to add the rapid automated presumptive test to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. We believe that this proposed action is warranted because the rapid automated presumptive test has been shown to provide an accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. Adding the rapid automated presumptive test to the list of official tests for brucellosis in cattle, bison, and swine would help to prevent the spread of brucellosis by making available an additional tool for its diagnosis in those animals.

DATES: Consideration will be given only to comments received on or before November 12, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–033–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–033–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Brucellosis Eradication Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1228, (301) 734–7708; or E-mail: mgilsdorf@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.* In its principal animal hosts—cattle, bison, and swine—brucellosis is characterized by abortion and impaired fertility. The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Official brucellosis tests are used to determine the brucellosis disease status of cattle, bison, and swine. The regulations stipulate that certain cattle, bison, and swine must, among other requirements, test negative to an official brucellosis test prior to interstate movement. Official brucellosis tests are also used to determine eligibility for indemnity payments for animals destroyed because of brucellosis. In § 78.1 of the regulations, the definition of *official test* lists those tests that have been designated as official tests for determining the brucellosis disease status of cattle, bison, and swine.

The Animal and Plant Health Inspection Service (APHIS) has developed a new serologic test for the detection of *Brucella* antibodies, and we are proposing to amend the regulations to add this new presumptive test as an official test. The test, known as the rapid automated presumptive (RAP) test, provides an accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. The RAP test is as sensitive as the existing buffered acidified plate antigen (BAPA) test currently used for cattle and bison and uses the same basic test criteria as the BAPA test, but the RAP test employs a computer reader and recording device to assess and report test results.

To conduct the RAP test, a laboratory technician places a serum sample drawn from a test eligible animal on a microtiter plate, then measures the amount of light that is transmitted through the microtiter well using a computer reader and visual processor. The technician then mixes test antigen with the serum and once again measures the light transmission through the microtiter well; if *Brucella* antibodies are present, there will be an agglutination reaction between the antibodies and the test antigens, and the agglutination will reduce the amount of light that is transmitted through the test well. The computer reader compares the two light measurements and reports whether the blood sample is positive or negative for *Brucella* antibodies, based on the agglutination reaction. If the percentage of agglutination indicated is measured at less than the established reference level for the test, the results would be interpreted as negative and the animal from which the sample was drawn would be considered to be free from brucellosis and would be classified as such. If the percentage of agglutination is higher, the results would be interpreted as positive and the animal would have to be subjected to another, more specific, official test to determine its brucellosis classification.

The additional official test would be necessary because the RAP test, like the standard card, BAPA, and rapid screening tests already in use as official tests, is a presumptive test. A presumptive test is used as a tool to quickly qualify animals for interstate movement by establishing their freedom from a specific disease. If an animal tests positive to a presumptive test, a more specific official test like the standard tube, standard plate, or complement-fixation test is necessary to confirm the positive result and establish the animal's specific disease classification (i.e., reactor or suspect) by measuring different types of antibodies and varying degrees of agglutination or fixation in a serum sample at different dilutions (titers).

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.

This proposed rule would amend the brucellosis regulations by adding the RAP test to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. The RAP test has been shown to provide an accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. We believe that

adding the RAP test to the list of official tests for brucellosis in cattle, bison, and swine would help to prevent the spread of brucellosis by making available a highly efficient tool for its diagnosis in those animals.

The equipment needed to run the RAP test is already operational in some States where it is used for the diagnosis of pseudorabies. We anticipate that the 15 to 25 States that conduct a higher percentage of the brucellosis testing would be more likely to use the RAP test. The cost of equipping the animal health laboratories in those States that do not already have the equipment would be absorbed by the Cooperative State/Federal Brucellosis Eradication Program.

Adding the RAP test as an official test is not expected to affect the market price of the animals tested. Although more rapid testing may allow faster marketing, the effect on owners of cattle, bison, and swine would not be significant. Use of the RAP test would be optional, and other presumptive official tests would remain available for use by State and Federal animal health officials. However, the cost of the RAP test is markedly lower than one presumptive official test currently in use—the particle concentration fluorescence immunoassay (PCFIA) test—and equal to that of the standard card test, which is another presumptive official test in wide use. Therefore, if those States currently using the PCFIA test as a presumptive test were to switch over to the RAP test, the total testing costs for the Cooperative State/Federal Brucellosis Eradication Program would be reduced.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 would be amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 78.1, in the definition of *official test,* paragraph (a)(12) would be redesignated as paragraph (a)(13) and new paragraphs (a)(12) and (b)(4) would be added to read as set forth below.

§ 78.1 Definitions.

* * * * *

Official test.

(a) * * *

(12) *Rapid Automated Presumptive (RAP) test.* An automated serologic test to detect the presence of *Brucella* antibodies in test-eligible cattle and bison. RAP test results are interpreted as either positive or negative; the results are interpreted and reported by a scanning autoreader that measures alterations in light transmission through each test well and the degree of agglutination present. Cattle and bison negative to the RAP test are classified as brucellosis negative; cattle and bison positive to the RAP test shall be subjected to other official tests to determine their brucellosis disease classification.

* * * * *

(b) * * *

(4) *Rapid Automated Presumptive (RAP) test.* An automated serologic test to detect the presence of *Brucella* antibodies in test-eligible swine. RAP test results are interpreted as either positive or negative; the results are interpreted and reported by a scanning autoreader that measures agglutination based on alterations in light transmission through each test well. Swine negative to the RAP test are classified as brucellosis negative; swine positive to the RAP test shall be subjected to other official tests to determine their brucellosis disease classification.

* * * * *

Done in Washington, DC, this 9th day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–23495 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 Series Airplanes; McDonnell Douglas MD–11 Airplanes; and British Aerospace Avro Model 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain transport category airplanes equipped with certain Honeywell Standard Windshear Detection System (WSS). This proposal would require a revision to the FAA-approved airplane flight manual to alert the flightcrew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. The proposal also would require replacement of the currently-installed line replaceable unit (LRU) with a modified LRU having new software that eliminates delays in the WSS. This proposal is prompted by a report of an accident during which an airplane encountered severe windshear during a missed approach. The actions specified by the proposed AD are intended to prevent significant delays in the WSS detecting hazardous windshear, which could lead to the loss of flight path control.

DATES: Comments must be received by October 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00

p.m., Monday through Friday, except Federal holidays.

Information related to this rulemaking action may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–121–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 18, 1996, the FAA issued AD 96–02–06, amendment 39–9494 (61 FR 2095, January 25, 1996), applicable certain transport category airplanes equipped with certain Honeywell Standard Windshear Detection Systems (WSS). That AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) to alert the flightcrew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. That AD also requires replacement of the currently-installed line replaceable unit (LRU) with a modified LRU having new software that eliminates delays in the WSS. That action was prompted by a report of an accident during which an airplane encountered severe windshear during a missed approach. The actions required by that AD are intended to prevent significant delays in the WSS detecting hazardous windshear, which could lead to the loss of flight path control.

Since the issuance of that AD, the FAA has determined that certain Boeing Model 727–200 series airplanes, McDonnell Douglas Model MD–11 airplanes, and British Aerospace Model Avro 146–RJ series airplanes may be equipped with Honeywell WSS that have the same design feature that can delay detection of windshear when the airplane's flaps are in transition. In light of this, these airplane models are subject to the same unsafe condition addressed in AD 96–02–06.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a revision to the FAA-approved AFM to alert the flightcrew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. The proposed also would require replacement of the currently-installed LRU with a modified LRU having new software that eliminates delays in the WSS.

Note: The FAA's normal policy is that when an AD requires a substantive change, such as a change (expansion) in its applicability, the ''old'' AD is superseded by removing it from the system and a new AD is added. In the case of this AD action, the FAA normally would have proposed superseding AD 96–02–06 to expand its applicability to include the additional affected airplanes. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to these additional airplanes. This proposed AD would not supersede AD 96–02–06; airplanes listed in the applicability of AD 96–02–06 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable only to Boeing Model 727–200 series airplanes, McDonnell Douglas Model MD–11 airplanes, and British Aerospace Model Avro 146–RJ series airplanes, equipped with the specified Honeywell WSS.

Cost Impact

There are approximately 200 airplanes of the affected design in the worldwide fleet. The FAA estimates that 100 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $6,000, or $60 per airplane.

It would take approximately 10 work hour per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be supplied by Honeywell at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $60,000, or $600 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing; McDonnell Douglas; and British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 96–NM–121–AD.

Applicability: The following models and series of airplanes, certificated in any category, equipped with Honeywell Standard Windshear Detection Systems (WSS) having the part numbers indicated below:

Manufacturer and model of airplane	Type of computer	Part numbers
Boeing 727–200 series	Expandable Windshear (Honeywell STC)	4053818–904, –905, or –906.
McDonnell Douglas MD–11 series	Flight Control Computer (OEM TC)	4059001–906.
British Aerospace Avro 146–RJ70A, –RJ85A, and –RJ100A series.	Flight Control Computer (OEM TC)	4068300–903.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent significant delays in the Honeywell Standard Windshear Detection Systems (WSS) detecting hazardous windshear, which could lead to the loss of flight path control, accomplish the following:

(a) Within 14 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

During sustained banks of greater than 15 degrees or during flap configuration changes, the Honeywell Windshear Detection and Recovery Guidance System (WSS) is desensitized and alerts resulting from encountering windshear conditions will be delayed.

(b) Within 30 months after the effective date of this AD, replace the currently-installed line replaceable unit (LRU) with a modified LRU having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD; after the replacement has been accomplished, the AFM limitation required by paragraph (a) of this AD may be revised to read as follows:

During sustained banks of greater than 15 degrees, the Honeywell Windshear Detection and Recovery Guidance System (WSS) is desensitized and alerts resulting from encountering windshear conditions will be delayed.

(c) As of 12 months after the effective date of this AD, no person shall install on any airplane an LRU that has not been modified in accordance with paragraph (b) of this AD. However, an unmodified LRU may be installed on the airplane for up to 12 months after the effective date of this AD, provided that, during that time, the AFM limitation required by paragraph (a) of this AD remains in effect.

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

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

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

Issued in Renton, Washington, on September 6, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23446 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–95–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 series airplanes and C–9 (military) series airplanes. This proposal would require modification of the emergency internal release system of the tailcone and the accessory compartment. This proposal is prompted by a report that, due to failure of the tailcone release system, the tailcone did not deploy on an airplane during an emergency evacuation. The actions specified by the proposed AD are intended to ensure that the emergency internal release system of the tailcone performs its intended function in the event of an emergency evacuation. The actions are also intended to prevent people on board the airplane from striking their head on exposed metal frames in the tailcone area, which could cause injury and delay or impede their evacuation during an emergency.

DATES: Comments must be received by October 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103,

Attention: Rules Docket No. 96–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5346; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–95–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during an emergency evacuation of a McDonnell Douglas Model DC–9–10 series airplane, the tailcone did not deploy when commanded. Extensive testing on the airplane indicated that the tailcone release system did not work properly. Subsequent investigations of other airplanes revealed that numerous tailcone release systems on these airplanes were not in proper working order.

Additionally, results of that testing has led the FAA to conclude that the area where the internal release system of the tailcone is located must be modified. The current location requires that the flight attendant enter the tailcone area to jettison the tailcone. If the flight attendant and evacuees enter the tailcone area during an emergency and the release handle fails to deploy the tailcone, the current configuration of the area makes it difficult for the passengers to reverse direction; this may contribute to slowing down the emergency egress. The FAA also finds that the metal frames in the tailcone area are exposed and without padding; this could result in the passengers or other personnel on board the airplane striking their head on these frames and injuring themselves.

All of these conditions, if not corrected, could delay or impede the evacuation of passengers during an emergency.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC–9 Service Bulletin 53–257, Revision 1, dated February 9, 1996, which describes procedures for modification of the emergency internal release system of the tailcone. For all airplanes, this modification involves installing a second internal release handle; revising the electrical wiring; installing a light in close proximity to the left-side of the doorway of the aft pressure bulkhead; and installing emergency decals. For certain airplanes, this modification also involves modifying and reidentifying the control panel assembly of the ventral stairway. Accomplishment of this modification will minimize the possibility of flight attendants encountering difficulty in evaluating conditions aft of the tailcone exit door of the airplane during an emergency evacuation. It also will allow trained or untrained personnel better access to deploy the tailcone and slide.

The FAA also has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 25–331, dated December 10, 1993, which describes procedures for modification of the accessory compartment. This modification involves installing overhead ceiling panels on the lower side of three frames and a protective pad on the last frame in the aft accessory compartment. Accomplishment of this modification will increase protection to passengers/personnel from striking their head against fuselage structure during an emergency.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the emergency internal release system of the tailcone and the accessory compartment. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Differences Between the Proposed Rule and the Relevant Service Information

Operators should note that, unlike the recommended compliance time of 12 months specified in Service Bulletin 25–331 for accomplishing the modification of the accessory compartment, the proposed AD would require the modification to be accomplished within 36 months. The FAA has determined that a 36-month compliance time will not adversely affect safety, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary.

Other Relevant Rulemaking

The FAA has previously issued several other ADs that concern the tailcone deployment system on Model DC–9 series airplanes:

1. AD 87–13–09, amendment 39–5665 (52 FR 24982, June 23, 1987), requires the installation of a tailcone ''unlatched/missing'' warning system.

2. AD 91–22–03, amendment 39–8063 (56 FR 60913, November 7, 1991), requires the installation of a ''tailcone missing'' indication system.

3. AD 91–26–09, amendment 39–8122 (57 FR 789, December 5, 1991), requires the replacement or modification of the internal and external tailcone release system cable and handle assemblies.

4. AD 95–02–02, amendment 39–9121 (60 FR 4074, January 6, 1995), requires an inspection of the tailcone release locking cable fitting assembly, and modification or replacement, if necessary.

However, this proposed AD would not affect the current requirements of any of those previously issued AD's.

Cost Impact

There are approximately 878 McDonnell Douglas Model DC–9 series airplanes and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 590 airplanes of U.S. registry would be affected by this proposed AD.

The proposed modification of the emergency internal release system would take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $6,660 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $4,177,200, or $7,080 per airplane.

The proposed modification of the accessory compartment would take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. For the 395 airplanes identified as ''Group I'' in the referenced service bulletin, required parts would cost approximately $1,777 per airplane. For the 195 airplanes identified as ''Group 2'' in the referenced service bulletin, required parts would cost $5,369 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators of Group 1 airplanes is estimated to be $938,915, or $2,377 per airplane; and on U.S. operators of Group 2 airplanes is estimated to be $1,163,955, or $5,969 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that 1 U.S.-registered airplanes has been inspected in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators has been reduced by that amount.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 96–NM–95–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) series airplanes; as listed in McDonnell Douglas DC–9 Service Bulletin 53–257, Revision 1, dated February 9, 1996, and McDonnell Douglas DC–9 Service Bulletin 25–331, dated December 10, 1993; operating in a passenger or passenger/cargo configuration; certificated in any category.

Note 1: The requirements of this AD become applicable at the time an airplane operating in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the emergency internal release system of the tailcone performs its intended function in the event of an emergency evacuation, accomplish the following:

(a) For airplanes listed in McDonnell Douglas DC–9 Service Bulletin 53–257, Revision 1, dated February 9, 1996: Within 36 months after the effective date of this AD, modify the emergency internal release system of the tailcone in accordance with the service bulletin.

(b) For airplanes listed in McDonnell Douglas DC–9 Service Bulletin 25–331, dated December 10, 1993: Within 36 months after the effective date of this AD, modify the accessory compartment in accordance with the service bulletin.

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

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

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

Issued in Renton, Washington, on September 6, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23445 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–156–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require modification of the system that detects a loss of tension in the cable controlling the flaps by removing the shim from behind the bracket for the proximity switch; and by trimming this bracket. This proposal is prompted by reports that the bracket could impair the movement of a pulley arm mechanism, ultimately preventing the detection system from operating. The actions specified by the proposed AD are intended to prevent such impairment, which could result in movement of the flaps without action by the pilot, and ultimately cause reduced controllability of the airplane.

DATES: Comments must be received by October 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–156–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of a discrepancy identified in the system that detects a loss of tension in the cable controlling the flaps (hereinafter called ''the detection system''), which is installed on certain Boeing Model 737–300, –400 and –500 series airplanes. Should an uncontained engine failure result in severing of the cable, this system detects the resultant loss of tension in the cable and turns off the hydraulic power that operates the flaps. Consequently, the flaps remain in the position in which they had been set prior to engine failure.

A loss of tension in the cable causes a pulley arm mechanism in the detection system to move a magnet away from the proximity switch. This enables the switch to provide a ground to the relay that supplies electrical power for closing a bypass valve. When this valve is closed, hydraulic power to the flap power unit is turned off.

An analysis of the detection system, performed by the manufacturer, showed that the pulley arm mechanism may not have sufficient clearance to move the magnet far enough from the proximity switch to activate the system. This condition, if not corrected, could cause movement of the flaps without action by the pilot, and ultimately could reduce the pilot's ability to control the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1199, dated June 20, 1996, which describes procedures for removing a shim, if installed, from behind the proximity switch; and trimming the bracket for the proximity switch. These modifications will enable the pulley arm mechanism to move the magnet the distance necessary for activating the detection system.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal of the shim behind the proximity switch, if installed; and trimming of the bracket for the proximity switch. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 1,619 Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 685 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $287,700, or $420 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 96–NM–156–AD.

Applicability: Model 737–300, –400 and –500 series airplanes having line production numbers 1001 through 2765, inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent movement of the flaps from their last set position without action by the pilot, which could reduce controllability of the airplane, accomplish the following:

(a) Within 18 months or 3,200 hours time-in-service after the effective date of this AD, whichever occurs first, remove the shim, if installed, from behind the bracket of the proximity switch in the system which detects a loss of tension in the cable controlling the flaps; and trim this bracket; in accordance with Boeing Alert Service Bulletin 737–27A1199, dated June 20, 1996.

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

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

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

Issued in Renton, Washington, on September 6, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23444 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–58–AD]

Airworthiness Directives; de Havilland Model DHC–8–102, –103, and –301 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–102, –103, and –301 series airplanes. This proposal would require a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. This proposal also would require installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights. This proposal is prompted by reports of chafing found on the electrical wiring of the cabin ceiling lighting system. The actions specified by the proposed AD are intended to prevent the possibility of a fire on an airplane due to such chafing and consequent short circuiting, overheating, and smoking of the wires on the aircraft structure.

DATES: Comments must be received by October 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, New York Aircraft Certification Office, Systems & Flight Test Branch (ANE–172), FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–58–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.

96–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–102, –103, and –301 series airplanes. Transport Canada Aviation advises that it received reports indicating that chafing of the electrical wiring was found at several locations of the cabin ceiling lighting system on Model DHC–8 series airplanes. The cause of this chafing has been attributed to the routing of the cables; this routing allowed the cables to come in contact with the cabin interior valence panels. Chafing of the electrical wiring of the cabin ceiling lighting system can cause the wires on the aircraft structure to short circuit, overheat, and smoke. This condition, if not corrected, could result in the possibility of fire on the airplane.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 8–33–35, dated September 1, 1995, which describes procedures for a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. The service bulletin also describes procedures for installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights (Modification 8/2158). Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–95–18, dated December 15, 1996, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. The proposed AD also would require installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $250 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $149,650, or $2,050 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

de Havilland, Inc.: Docket 96–NM–58–AD.

Applicability: Model DHC–8–102, –103, and –301 series airplanes; serial numbers 002 though 010 inclusive, 012 through 201 inclusive, 203 through 209 inclusive, 211 through 215 inclusive, 217 through 220 inclusive, 222, and 223; on which de Havilland Modification 8/1114 or 8/1110 (reference de Havilland Service Bulletin S.B. 8–33–35) has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of a fire on an airplane due to chafing of the electrical wiring of the cabin ceiling lighting system, accomplish the following:

(a) Within 1,000 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995.

(1) Perform a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights. Prior to further flight, replace any damaged wiring.

(2) Install teflon spiral wrap on the wiring of the ceiling and sidewall lights (Modification 8/2158).

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

Issued in Renton, Washington, on September 6, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23443 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–88–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require an inspection to detect cracking of the torque tube assembly of the left-hand (LH) elevator and surrounding structure; and to detect loose or sheared rivets in that assembly. It would also require either replacement or repair of discrepant parts, as appropriate. This proposal is prompted by a report of fatigue cracking found on the torque tube support of the LH elevator. The actions specified by the proposed AD are intended to ensure that cracking is detected and corrected in a timely manner so as to prevent failure of the torque tube or its support structure, which could result in reduced controllability of the airplane.

DATES: Comments must be received by October 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–88–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The RLD advises that it has received a report of fatigue cracking of the torque tube support of the left-hand (LH) elevator on one of these airplanes. That airplane had accumulated 61,200 total landings.

The fatigue cracking of the torque tube on the left-hand side appears to be caused by heavy vibration due to the propeller wake. Cracking, and subsequent failure of the torque tube of the LH elevator and/or its support structures, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F27/55–66, dated December 21, 1994, which describes procedures for a one-time inspection to detect cracking of the left-hand (LH) elevator torque tube and its surrounding structure. It also describes procedures for a one-time inspection to detect loose or sheared rivets of that torque tube. The service bulletin also contains procedures for either replacing or repairing any discrepancy found. The RLD classified this service bulletin as mandatory and issued Netherlands airworthiness directive BLA 1995–007(A), dated January 31, 1995, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to detect fatigue cracking of the torque tube of the LH elevator and its surrounding structure, and repair, if necessary. This proposed AD also would require an inspection to detect loose or sheared rivets of the same torque tube assembly, and replacement with serviceable rivets, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Other Relevant Rulemaking

Similar cracking of the torque tube previously was reported to be found on only the right-hand elevator. The FAA has mandated inspections to detect cracking of that area by means of AD 96–13–07, amendment 39–9675 (61 FR 34718, July 3, 1996), through the F27 Structural Inspection Program.

Cost Impact

The FAA estimates that 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,160, or $240 per airplane.

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

Should an operator be required to replace the torque tube assembly of the LH elevator, the FAA estimates that it would take approximately 2 work hours per airplane to accomplish, and that the average labor rate is $60 per work hour. Replacement of the assembly would cost approximately $1,500 per airplane. Based on these figures, the cost impact of the replacement is estimated to be $1,620 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 96–NM–88–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that cracking is detected and corrected in a timely manner so as to prevent failure of the torque tube of the left-hand elevator or its support structure, which could result in reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 45,000 total flight cycles, or within 4 months after the effective date of this AD, whichever occurs later, perform an inspection to detect cracking of the torque tube assembly and the surrounding structure of the left-hand (LH) elevator, and to detect any loose or sheared rivets of that assembly, in accordance with ''Part 1'' of the Accomplishment Instructions of Fokker Service Bulletin F27/55–66, dated December 21, 1994.

(b) If no cracking is detected, and if no loose or sheared rivet is detected, during the inspection required by paragraph (a) of this AD: No further action is required by this AD.

(c) If any discrepancy is detected during the inspection required by paragraph (a) of this AD: Accomplish the applicable requirements of paragraphs (c)(1), (c)(2), or (c)(3) of this AD at the time specified in that paragraph, and in accordance with Fokker Service Bulletin F27/55–66, dated December 21, 1994.

(1) If any cracking of the torque tube is detected, or if any loose or sheared rivet is detected: Prior to further flight, replace the discrepant part(s) in accordance with ''Part 2,'' paragraph A., of the Accomplishment Instructions of the service bulletin.

Note 2: Fokker Service Bulletin F27/55–66 references Fokker Service Bulletin F27/55–40 as an additional source of service information for procedures to replace the torque tube assembly with a serviceable assembly.

(2) If any cracking of the rib at station 300 is detected: Prior to further flight, repair in accordance with ''Part 2,'' paragraph B., of the Accomplishment Instructions of the service bulletin.

(3) If any cracking in the torque tube support is detected: Prior to further flight, accomplish the requirements of either paragraph (c)(3)(i) or (c)(3)(ii) of this AD, as applicable.

(i) If the crack length does not exceed 30 mm, stop drill the crack and, thereafter, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 50 flight hours, in accordance with ''Part 2,'' paragraph C, of the Accomplishment Instructions of the service bulletin.

(ii) If the crack length exceeds 30 mm, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through

an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

Issued in Renton, Washington, on September 6, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23442 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–SW–06–AD]

Airworthiness Directives; Hiller Aircraft Corporation Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, CH–112, H23A, H–23B, H–23C, H–23D, H–23F, HTE–1, HTE–2, and OH–23G Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Hiller Aircraft Corporation Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, CH–112, H–23A, H–23B, H–23C, H–23D, H–23F, HTE–1, HTE–2, and OH–23G helicopters, and Model UH–12D and UH–12E helicopters, converted to turbine engine power in accordance with Supplemental Type Certificate (STC) No.'s SH177WE and SH178WE, that currently requires inspections of the control rotor blade spar tube (blade spar tube) and cuff for cracks, and repair or replacement as necessary. This action would require inspections of the blade spar tube and cuff for corrosion or cracks, or elongation, corrosion, burrs, pitting or fretting of the bolt holes, and repair as necessary, and would define specific intervals in which the inspections must be performed. This proposal is prompted by analyses that showed that the amount of calendar time that elapses between the current repetitive inspections may allow corrosion to develop. The actions specified by the proposed AD are intended to prevent separation of the control rotor blade assembly and subsequent loss of control of the helicopter.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Hiller Aircraft Corporation, 7980 Enterprise Dr., Newark, California 94560–3497. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Matheis, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount. Blvd., Lakewood, California 90712–4137, telephone (310) 627–5235, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–SW–06–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On October 4, 1974, the FAA issued AD 74–21–05, Amendment 39–1990 (39 FR 36855, October 15, 1974), to require, within the next 25 hours time-in-service (TIS) after the effective date of the AD, unless already accomplished within the last 25 hours TIS, and thereafter, at intervals of 100 hours TIS, inspections, and repair or replacement, as necessary, of the blade spar tube and cuff. On March 24, 1977, the FAA issued superseding AD 77–07–05, Amendment 39–2862 (42 FR 17868, April 4, 1977) to require, within the next 100 hours TIS after the effective date of the AD, unless already accomplished within the last 100 hours TIS, and thereafter, at intervals of 100 hours TIS, inspections of the blade spar tube and cuffs for cracks, corrosion or excessive wear of the outboard retention bolts, and repair or replacement, if necessary; and to establish a service life of 6,860 hours TIS. Then, on June 3, 1977, the FAA issued a revision to Amendment 39–2862 (42 FR 30604, June 16, 1977), AD 77–07–05, which required, within the next 25 hours time-in-service (TIS) after the effective date of the AD, unless previously accomplished within the last 25 hours TIS, and thereafter at intervals not to exceed 50 hours TIS from the date of the last inspection, dye penetrant inspections of the cuff for cracks, and replacement as necessary. That action was prompted by a determination made by the FAA that the data originally furnished as to the availability of replacement parts was inaccurate. Also, the FAA determined that the service experience and the use of repetitive dye penetrant inspections at intervals not to exceed 50 hours TIS, would provide an adequate level of safety and would avoid the unnecessary grounding of aircraft. The requirements of that AD are intended to prevent separation of the control rotor blade assembly and subsequent loss of control of the helicopter.

Since the issuance of that AD, FAA analyses have shown that the amount of calendar time that elapses between the current repetitive inspections may allow corrosion to develop. Additionally, the FAA has determined that the AD should also apply to those model helicopters that have been converted to turbine

engine power in accordance with STC No.'s SH177WE and SH178WE.

Since an unsafe condition has been identified that is likely to exist or develop on other Model UH–12, UH–12A, UH12B, UH–12C, UH–12D, UH–12E, CH–112, H–23A, H–23B, H–23C, H23D, H–23F, HTE–1, HTE–2, and OH–23G helicopters, and Model UH–12D and UH–12E helicopters, converted to turbine engine power in accordance with STC No.'s SH177WE and SH178WE, the proposed AD would supersede AD 77–07–05 to require, within the next 100 hours TIS after the effective date of this AD, unless accomplished within the last 100 hours TIS, and thereafter at intervals not to exceed 100 hours TIS from the date of the last inspection, or at the next annual inspection, whichever occurs first, an inspection of the blade spar tube and cuff for corrosion or cracks, or elongation, corrosion, burrs, pitting or fretting of the bolt holes, and repair, as necessary, in accordance with Hiller Aviation Service Bulletin No. 36–1, Revision 3, dated October 24, 1979.

The FAA estimates that 673 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the inspection, 1 work hour to accomplish the repair, and 8 work hours to accomplish the replacement, if necessary, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,000 per cuff, if replacement is necessary. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $121,140, assuming after inspection that repairs are necessary on all of the fleet, or $246,772, assuming inspection of all the fleet and replacement of a cuff in one-sixth of the fleet is necessary.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–2862 (42 FR 17868, April 4, 1977), and Amendment 39–2917 (42 FR 30604, June 16, 1977) and by adding a new airworthiness directive (AD), to read as follows:

Hiller Aircraft Corporation: Docket No. 96–SW–06–AD. Supersedes AD 77–07–05, Amendment 39–2862 and Amendment 39–2917.

Applicability: Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, CH–112, H–23A, H–23B, H–23C, H–23D, H–23F, HTE–1, HTE–2, and OH–23G helicopters, and Model UH–12D and UH–12E helicopters, converted to turbine engine power in accordance with Supplemental Type Certificate (STC) No.'s SH177WE and SH178WE, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the control rotor blade assembly and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless previously accomplished within the last 100 hours TIS, and thereafter at intervals not to exceed 100 hours TIS from the date of the last inspection, or at the next annual inspection, whichever occurs first, inspect the control rotor blade spar tube and cuff for corrosion or cracks, or elongation, corrosion, burrs, pitting or fretting of the bolt holes, and repair, as necessary, in accordance with the Accomplishment Instructions of Hiller Aviation Service Bulletin No. 36–1, Revision 3, dated October 24, 1979.

(b) After any reaming procedure is accomplished in accordance with Hiller Aviation Service Bulletin No. 36–1, Revision 3, dated October 24, 1979, the control rotor blade spar tube (faired and unfaired) and cuff must be retired at or before accumulating an additional 2,500 hours TIS after repair or when the current approved total service life (total service life before repair plus service life after repair) is reached, whichever comes first.

(c) Fabric covered, metal covered, faired and unfaired control rotor blades are not interchangeable and must not be intermixed.

(d) For Hiller cuffs, part number (P/N) 36124, used with both faired and unfaired paddles:

(1) With more than 6,660 hours TIS, remove and replace with an airworthy part within 200 hours TIS after the effective date of this AD.

(2) With less than or equal to 6,660 hours TIS, remove and replace with an airworthy part prior to 6,860 hours TIS.

(3) Without a complete prior service history, within the next 25 hours TIS, unless already accomplished within the last 25 hours TIS prior to the effective date of this AD, and at intervals not to exceed 50 hours TIS, perform a dye penetrant inspection of the cuff in accordance with paragraph G of the Accomplishment Instructions of Hiller Aviation Service Bulletin, No. 36–1, Revision 3, dated October 24, 1979. If a crack is discovered, remove the cracked cuff from service prior to further flight. A cuff for which the prior service history cannot be documented cannot be used as a replacement part. Remove from service all cuffs prior to the accumulation of 225 hours total TIS since April 7, 1977.

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

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

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on September 4, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–23441 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Supplement to California State Plan; Request for Public Comment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for public comment: California State Standard on Hazard Communication Incorporating Proposition 65.

SUMMARY: This document invites public comment on a supplement to the California occupational safety and health plan. The supplement, submitted on January 30, 1986, with amendments submitted on November 22, 1986 and January 30, 1992, concerns the State's adoption of a hazard communication standard, which incorporates provisions of the Safe Drinking Water and Toxic Enforcement Act, also called Proposition 65. California also submitted clarifications concerning the standard and its enforcement on February 16 and February 28, 1996. The State's standard is substantively different in both its content and supplemental method of enforcement from the Federal Occupational Safety and Health Administration (OSHA) standard found at 29 CFR 1910.1200. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be ''at least as effective'' as the Federal standard. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment on whether the California hazard communication standard meets the above requirements.

DATES: Written comments should be submitted by November 12, 1996.

ADDRESSES: Written comments should be submitted to Docket T–032, Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ann Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone: (202) 219–8148.

A. Background

The Act generally preempts any State occupational safety and health standard that addresses an issue covered by an OSHA standard, unless a State plan has been submitted and approved. (See *Gade, Director, Illinois Environmental Protection Agency* v. *National Solid Wastes Management Association*, No. 90–1676 (June 18, 1992).) Once a State plan is approved, the bar of preemption is removed and the State is then able to adopt and enforce standards under its own legislative and administrative authority. Therefore, any State standard or policy promulgated under an approved State plan becomes enforceable upon State promulgation. Newly adopted State standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but are enforceable by the State prior to Federal review and approval. (*See Florida Citrus Packers, et. al.* v. *State of California, Department of Industrial Relations, Division of Occupational Safety and Health et al*, No. C–81–4218 (July 26, 1982).)

On May 1, 1973, a document was published in the Federal Register (38 FR 10717) of the approval of the California State plan and the adoption of Subpart CC to Part 1952 containing the decision.

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR 1902.29, 1952.7, 1953.21, 1953.22 and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register.

Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards, in addition to being at least as effective as the comparable Federal standards, must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the ''product clause.'') OSHA's policy (as contained in OSHA Instruction STP 2–1.117) is to make a preliminary determination as to whether the standard is at least as effective as the Federal standard, and then rely on public comment as the basis for its decision on the product clause issue.

B. Description of the Supplement

Original Hazard Communication Standard

On September 10, 1980, the Governor of California signed the Hazardous Information and Training Act (California Labor Code, sections 6360 through 6399). This Act provided that the Director of Industrial Relations establish a list of hazardous substances and issue a standard setting forth employers' duties toward their employees under that Act. The standard, General Industry Safety Order 5194, was adopted by the State in 1981. Both the Director's initial list and the standard became effective on February 21, 1983. Subsequently, Federal OSHA promulgated a hazard communication standard (29 CFR 1910.1200) in November 1983. The State amended its law in 1985, and, after a period for public review and comment, the California Standards Board adopted a revised standard for hazard communication comparable to the Federal standard on October 24, 1985. The standard became effective on November 22, 1985. By letter dated January 30, 1986, with attachments, from Dorothy H. Fowler, Assistant Program Manager, to then Regional Administrator, Russell B. Swanson, the State submitted the standard (8 CCR section 5194) and incorporated the standard as part of its occupational safety and health plan.

The State hazard communication standard differs from the Federal standard in several respects. The State standard requires that each Material Safety Data Sheet contain certain information including Chemical Abstracts Service (CAS) name and a description in lay terms of the specific potential health risks posed by the hazardous substance. These two State requirements are not included in the Federal standard. However, in a memorandum from John Howard, Chief,

Division of Occupational Safety and Health, enclosed with a letter of February 28, 1996, from John MacLeod, Executive Officer of the California Occupational Safety and Health Standards Board to Regional Administrator Frank Strasheim, the State notes that section 6392 of the California Labor Code provides that provision of a Federal material safety data sheet or equivalent shall constitute prima facie proof of compliance with the standard. The memorandum states, ''Thus, a manufacturer who supplies a MSDS which is accurate and fully complies with the federal OSHA regulation is in compliance in California.''

While the Federal standard allows for release of trade secret information to health professionals, the California standard allows access to such information to safety professional as well. The State argues that this provision is more protective of worker safety, since many safety and health programs are managed by safety professionals who have both safety and health expertise.

Finally, the State standard does not include many of the exemptions and exceptions added to the Federal standard in 1994.

Proposition 65

Subsequently, on January 30, 1992, in a letter from John Howard, Chief, California Division of Occupational Safety and Health, to Regional Administrator Frank Strasheim, the State submitted changes to its hazard communication standard by incorporating provisions found in the State's Safe Drinking Water and Toxic Enforcement Act (Proposition 65). This Act was passed by referendum of the voters of California in 1986. The Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code sections 25249.5 through 25249.13) and implementing regulations issued by the Office of Environmental Health Hazard Assessment in the California Environmental Protection Agency (22 California Code of Regulations 12601) require that any business with ten or more employees which exposes an individual to a chemical known to the State to cause cancer or reproductive toxicity must provide the individual with a clear and reasonable warning. The regulations provide that the warning may be given through the label of a product or a sign in the workplace and give sample language for the warning. For labels, the warnings which are deemed to meet the requirements of Proposition 65 are: ''WARNING: This product contains a chemical known to the State of California to cause cancer,'' or ''WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.'' For signs, the language deemed to meet the requirements is: ''WARNING: This area contains a chemical known to the State of California to cause cancer,'' or ''WARNING: This area contains a chemical known to the State of California to cause birth defects or other reproductive harm.'' In accordance with Proposition 65, the State annually publishes a list of chemicals known to cause cancer or reproductive toxicity (22 CCR Section 12000).

The provisions of Proposition 65 relating to occupational exposure were incorporated into the California Hazard Communication standard after a January 23, 1991, court order which required the California Standards Board to amend the State's Hazard Communication standard to incorporate the warning protections of Proposition 65. (See *California Labor Federal, AFL–CIO* v. *California Occupational Safety and Health Standards Board*.) (Absent adoption of these additional requirements as occupational safety and health standards under the OSHA-approved California State plan, the Proposition 65 requirements would be preempted as they apply in the workplace.) These changes were adopted on an emergency basis on May 16, 1991, and became effective on May 31, 1991. The permanent standard became effective on December 17, 1991.

Enforcement of Proposition 65

Proposition 65 is enforceable with regard to occupational hazards through the usual California State plan system of citations and proposed penalties which has been determined to be at least as effective as Federal OSHA enforcement. Proposition 65 as incorporated into the State plan provides for the supplemental enforcement mechanism of judicial enforcement procedures including civil lawsuits filed by the Attorney General, district attorneys, city attorneys or city prosecutors. In addition, a private right of action may be brought by any ''person'' in the public interest against any ''person'' for knowingly and intentionally exposing any individual to a chemical known to the State to cause cancer or reproductive toxicity without first giving clear and reasonable warning. The person bringing the action must first give notice to the Attorney General and appropriate local prosecutors, and may proceed if those officials do not bring an action in court within sixty days. In such actions, the burden of proof is on the defendant to demonstrate that the exposure to the listed chemical ''poses no significant risk assuming lifetime exposure at the level in question for substances known to the State to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand times the level in question for substances known to the State to cause reproductive toxicity, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical. '' (California Health and Safety Code, Section 25249.10(c).)

The law provides for penalties of up to $2500 per day, per violation. The plaintiff may obtain up to 25% of penalties levied against a company found in violation of Proposition 65 for failing to warn the public and/or employees. Numerous such ''bounty hunter'' actions with regard to occupational exposures have been brought in California courts, and many have been settled on varying bases prior to trial.

Other Hazard Communication Provisions

For exposures subject to the remainder of the hazard communication standard, the employer must provide specific information about the chemicals to which employees may be exposed, including, among other things, the identity of the hazardous chemical, potential health risks including signs and symptoms of exposure, precautions for safe handling and use of the chemical, any generally applicable control measures, such as engineering controls, work practices or personal protective equipment, and emergency and first-aid procedures. The provisions of the hazard communication standard apart from Proposition 65 are enforced solely by the Division of Occupational Safety and Health under approved procedures similar to those of Federal OSHA. These include on-site inspections by Division personnel, including the right of employees to be involved in the inspections, citations and proposal of penalties for violations, and opportunity for appeal of citations and penalties. (Proposition 65 is also enforceable by DOSH through this mechanism, but, to date, this authority has not been exercised.)

Public Interest

On April 18, 1995, McKenna and Cuneo, a law firm representing a coalition of chemical manufacturers, filed a petition with OSHA requesting that the California hazard communication standard with its

incorporation of Proposition 65 be rejected as being unduly burdensome on interstate commerce in both its provisions and enforcement mechanism. The Chemical Manufacturers Association and several employers have filed letters in support of the McKenna and Cuneo request, citing difficulties experienced by its members with both the alternative enforcement scheme and the impact on interstate commerce. Other parties have expressed concern to OSHA about the continued enforceability of the private right of action provisions of Proposition 65 in the workplace during the pendency of the OSHA review process. In addition, the Environmental Defense Fund has written asking OSHA to reject the McKenna and Cuneo position and accept the California Hazard Communication standard as it is currently being applied in occupational settings. All of these letters are included in Docket T–032 for this proceeding and are available for public inspection.

C. Issues for Determination

The California Hazard Communication standard is now under review by the Assistant Secretary to determine whether it meets the requirements of section 18(c)(2) of the Act and 29 CFR Parts 1902 and 1953. While Proposition 65 includes provisions relating to public health as well as occupational safety and health, OSHA's review of the law is limited to its occupational aspects as incorporated into the State hazard communication standard. Public comment is being sought by OSHA on the following issues.

1. ''At least as effective'' requirement. The provisions of the California hazard communication standard, other than those incorporating Proposition 65, have been preliminarily determined to be at least as effective as the Federal hazard communication standard (29 CFR 1910.1200). The incorporation of Proposition 65 imposes requirements which go beyond those contained in the Federal standard; therefore, it may be viewed as more effective than the Federal standard. However, the issue has been raised that the different warnings required by Proposition 65 for exposures not otherwise covered by the hazard communication standard make the standard less effective by engendering confusion and failing to give employees information about the chemicals to which they may be exposed and ways to mitigate exposure. In addition, questions have been raised about the effectiveness of occupational safety and health standards being enforced by local attorneys and private parties in addition to the State designee. Therefore, public comment on the effectiveness of the standard as well as the supplemental enforcement mechanism provided for in Proposition 65 is solicited for OSHA's consideration in its final decision on whether or not to approve this California standard.

2. Product clause requirement. OSHA is also seeking through this notice public comment as to whether the California standard:

(a) Is applicable to products which are distributed or used in interstate commerce;

(b) If so, whether it is required by compelling local conditions; and

(c) Unduly burdens interstate commerce.

As noted above, OSHA has already received comments on the California hazard communication standard, and Proposition 65 in particular, from several individual employers and employer groups. These parties have raised several issues concerning the product clause. Under Proposition 65, warnings are required for different substances than those covered by the Federal hazard communication standard, and for different levels of exposure or different health effects for some substances which are covered by the Federal standard. In addition, the State has acknowledged that the provision of information on the Material Safety Data Sheets required by the hazard communication standard may not always be accepted as compliance with Proposition 65. Therefore, some commenters have asserted that manufacturers may need to have products labeled as carcinogens or reproductive toxins in California but not in other States, and must include specific language not required for products destined for other States, thus creating a burden on interstate commerce.

The issue has also been raised that enforcement by private parties may create a burden on interstate commerce by subjecting out-of-State employers and suppliers to inconsistent requirements depending on the circumstances of individual lawsuits and the settlements or decision rendered thereon.

The State addressed both effectiveness and product clause issues in a letter dated February 16, 1996 from John Howard, Chief, Division of Occupational Safety and Health, to OSHA Regional Administrator Frank Strasheim (included in Docket T–032). The State argues that the additional enforcement mechanisms merely supplement the administrative enforcement of the standard by Cal/OSHA and therefore do not detract from its effectiveness. In addition, the State notes that supplemental enforcement is a feature of several Federal laws, including Solid Waste Disposal Act (Pub. L. 98–616) and the Federal Water Pollution Control Act (Pub. L. 92–500).

The State asserts that this standard does not fall within the product clause because it does not require machinery or equipment to be custom-built. The letter cites the Congressional history of section 18(c)(2) of the Act to demonstrate that the discussion focused on avoiding the need for manufacturers to design machinery differently to meet requirements in different States (116 Congressional Record 38381 et seq.). In addition, according to the State's position, the standard does not unduly burden interstate commerce because compliance may be achieved by workplace postings which need not travel in interstate commerce. Finally, the State maintains that the standard is justified by compelling local conditions because the voters of California, in passing Proposition 65, determined that there is a pressing need for additional protection from exposure to toxic chemicals, beyond that provided by the existing Federal hazard communication standard.

D. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to the issues described above. These comments must be received on or before October 15, 1996, and be submitted in quadruplicate to Docket T–032, Docket Office, Room N–2625, U.S. Department of Labor, OSHA, 200 Constitution Avenue, N.W., Washington, DC 20210. Comments under 10 pages long may be sent by telefax to the Docket Office at 202–219–55046 but must be followed by a mailed submission in quadruplicate. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The State will be given an opportunity to respond to the public comments. Interested persons may request an informal hearing concerning OSHA's consideration of the plan change. Such requests also must be received on or before October 15, 1996, and should be submitted in quadruplicate to the Docket Office, Docket T–032, at the address noted above. The Assistant Secretary will decide within 30 days of the last day for filing written comments and requests for a hearing and opportunity for State response whether substantial issues

have been raised which warrant public discussion, and, if so, will publish notice of the time and place of an informal hearing.

The Assistant Secretary will consider all relevant comments, arguments, and requests submitted concerning these standards, including the record of any hearing held, and will publish notice of the decision approving or disapproving them.

E. Location of Supplement for Inspection and Copying

A copy of the California Hazard Communication standard may be inspected and copied during normal business hours at the following locations: Docket Office (Docket T–032), Room N–2625, U.S. Department of Labor, OSHA, 200 Constitution Avenue, N.W., Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 71 Stevenson Street, Suite 415, San Francisco, CA 94105; California Division of Occupational Safety and Health, Department of Industrial Relations, 45 Fremont Street, Room 1200, San Francisco, CA 94105.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

Signed this 6th day of September, 1996 in Washington, D.C.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–23458 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–26–P

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29 CFR Part 1952

[Docket No. T–031]

North Carolina State Plan; Eligibility for Final Approval Determination; Proposal To Grant an Affirmative Final Approval Determination; Comment Period and Opportunity To Request Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed final State plan approval; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the eligibility of the North Carolina State occupational safety and health plan, as administered by the North Carolina Department of Labor, for determination under section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State plan should be granted.

If an affirmative determination under section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the North Carolina plan. This notice announces that OSHA is soliciting written public comment regarding whether or not final State plan approval should be granted, and offers an opportunity to interested persons to request an informal public hearing on the question of final State plan approval.

DATES: Written comments or requests for a hearing should must be received by October 15, 1996.

ADDRESSES: Written comments or requests for a hearing should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–031, U.S. Department of Labor, Room N2625 200 Constitution Avenue NW, Washington. DC 20210, (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW, Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq , (the ''Act'') provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of a State plan. Procedures for State Plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and .4, finds that the plan provides or will provide for State standards and enforcement which are at least as effective as Federal standards and enforcement, ''initial approval'' is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary ''developmental steps'' to meet the criteria within a three-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a ''certification of completion of developmental steps'' when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34).

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an ''operational status agreement'' with OSHA (29 CFR 1954.3(f)). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied.

An affirmative determination under section 18(e) of the Act (usually referred to as ''final approval'' of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for section 18(e) determinations are found at 29 CFR Part 1902, Subpart D. In general, in order to be granted final approval, actual performance by the State must be ''at least as effective'' overall as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall,* C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each state plan State the number of enforcement personnel needed to assure a ''fully effective'' enforcement program.

The last requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final approval.

History of the North Carolina Plan and of Its Compliance Staffing Benchmarks

North Carolina Plan

On November 27,1972, North Carolina submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C and on December 9, 1972 a notice was published in the Federal Register (37 FR 26371) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons 30 days in which to submit data, views and arguments in writing concerning the plan.

Written comments concerning the plan were submitted on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the U.S.S. Agri-Chemicals. No other written comments were received, and no request for an informal hearing was received.

On February 1, 1973, the Assistant Secretary published a Federal Register notice (38 FR 3041) granting initial approval of the North Carolina plan as a developmental plan and adopting Subpart I of Part 1952 containing the decision and describing the plan.

The North Carolina Department of Labor is designated as the agency having responsibility for administering the plan throughout the State under the authority of the North Carolina Occupational Safety and Health Act (S.B. 342, Chapter 295). The plan provides for the adoption by North Carolina of standards which are ''at least as effective'' as Federal occupational safety and health standards. In most cases the State standards are identical to the Federal. The plan requires employers to furnish employment and place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the State agency. Employees are required to comply with all standards and regulations applicable to their conduct.

The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; coverage under the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. The notice of initial approval noted that the State does not cover private sector maritime employment, employment on military bases, or domestic workers.

Notices of contest of citations and penalties are filed with the Commissioner of Labor and are heard by the North Carolina Occupational Safety and Health Review Board, an independent administrative review board. Decisions of the North Carolina Occupational Safety and Health Review Board may be appealed to the North Carolina Superior Court and those decisions may be ultimately appealed to the North Carolina State Supreme Court.

The Assistant Secretary's initial approval of the North Carolina developmental plan, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart I (38 FR 3041, February 1, 1973)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and documentation submitted for OSHA approval on or before March 31, 1976. These ''developmental steps'' included enactment of the North Carolina Occupational Safety and Health Act, promulgation of State occupational safety and health standards essentially identical to Federal standards and establishment of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program including, among other things: documentation of staff training; a merit staffing system; regulations for inspections, citations and proposed penalties; record keeping and reporting regulations; standards and variances regulations; compliance procedures; and, rules of procedure for the North Carolina Occupational Safety and Health Review Board.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The North Carolina Subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.152).

On October 5, 1976, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that North Carolina had satisfactorily completed all developmental steps (41 FR 43896). In certifying the plan, the Assistant Secretary found the structural features of the program—the statutes, standards, regulations, and written procedures for administering the North Carolina plan—to be as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with section 18(e) of the Act whether the statutory or regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On February 20, 1975, OSHA and the State of North Carolina entered into an Operational Status Agreement which suspended the exercise of Federal concurrent enforcement authority in all except specifically identified areas. (See 40 FR 16843).

On September 3, 1991, a tragic fire occurred at the Imperial Food Products chicken processing plant in Hamlet, North Carolina, which resulted in the deaths of 25 workers. In response to that event OSHA undertook a comprehensive reevaluation of the performance of the North Carolina State Plan and a special evaluation of all other State Plans. On October 24, 1991 (56 FR 55192) OSHA reasserted concurrent Federal enforcement jurisdiction in North Carolina with respect to all currently pending and new complaints of discrimination filed either with OSHA or the State; all complaints of unsafe or unhealthful working conditions brought to OSHA's attention on or after October 24, 1991 by employees or referred by others; and referrals from the North Carolina Governor's 800 ''Safety Line.'' This action was responsive to the State's request for assistance. Upon further request, on March 31, 1992, (57 FR 10820) OSHA extended its jurisdiction to include all as yet uninvestigated workplace complaints filed with the State as of March 20, 1992.

Congressional oversight hearings were held on the Hamlet fire and the AFL–

CIO, on September 11, 1991, petitioned the Assistant Secretary to withdraw approval of the North Carolina State Plan. (See September 30, 1991, Request for Public Comment (56 FR 49444) and January 16, 1992, Extension of the Comment Period and Announcement of the Availability of a Special Evaluation report on North Carolina (57 FR 1889).) On January 7, 1992, OSHA issued a Special Evaluation report on North Carolina finding significant deficiencies and giving the State 90 days to take corrective action. On April 23, 1992, OSHA determined that the State's response to the Special Evaluation findings was insufficient and gave North Carolina 45 days to show cause why plan withdrawal action should not be initiated. Fully satisfactory assurances that necessary corrective action would be undertaken were received in June 1992.

North Carolina subsequently made substantive and significant improvements to its program. Major modifications were made to the State's occupational safety and health program enabling legislation; State funding and staffing were increased. The State dedicated the inspection resources to the program necessary to provide effective worker protection in the State and addressed all of the deficiencies identified as a result of OSHA's 1991 Special Evaluation Report. The State increased its allocated enforcement staff to 115 (64 safety and 51 health) and trained its new compliance officers in accord with the schedule outlined in the State's June 1992 corrective action commitments. North Carolina resumed responsibility for all discrimination complaints effective July 1, 1992, as a result of enactment of legislation creating the Workplace Retaliatory Discrimination (WORD) Division, selection and training of dedicated staff, and revision of its discrimination manual to be comparable to OSHA's. These and other actions also resolved all issues raised in the AFL–CIO's petition for withdrawal of approval of the North Carolina State Plan.

OSHA evaluation reports on North Carolina's performance subsequent to the Special Evaluation, documented continuing improvement and indicated that the program was operating in an effective manner with an outstanding commitment to necessary enforcement as well as creative outreach and other voluntary compliance activities. Based on this record, OSHA on March 7, 1995, determined that the exercise of concurrent Federal enforcement jurisdiction was no longer warranted and suspended Federal enforcement authority except with regard to those issues not covered by the State. OSHA similarly determined that no further action was necessary or appropriate with regard to the AFL–CIO petition for North Carolina plan withdrawal. (See 44 FR 12416.)

North Carolina Benchmarks

Under the terms of a 1978 Court Order in *AFL–CIO* v. *Marshall,* compliance staffing levels (benchmarks) necessary for a ''fully effective'' enforcement program were required to be established for each State operating an approved State plan. In 1980, in response to the Court Order, OSHA established benchmarks for all approved State plans, including benchmarks of 83 safety and 119 health compliance officers for North Carolina. The 1978 Court Order noted that new information might warrant an adjustment by OSHA of the fully effective benchmarks. In September 1984 North Carolina in conjunction with OSHA, completed a reassessment of the levels resulting in proposed revised compliance staffing benchmarks of 50 safety and 27 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986 (51 FR 2481).

In March 1989 the North Carolina House Appropriations Committee of the North Carolina General Assembly passed a resolution instructing the Commissioner of Labor to again renegotiate the appropriate number of North Carolina occupational safety and health compliance officers with OSHA. In June 1990 the State of North Carolina requested that the Assistant Secretary approve revisions to its 1984 compliance staffing benchmark levels which the State found to be more reflective of current occupational safety and health needs and circumstances within the State. This reassessment resulted in a proposal to OSHA of revised compliance staffing benchmarks of 64 safety and 50 health compliance officers for the State of North Carolina. These revised benchmarks were approved by the Assistant Secretary on June 4, 1996, after opportunity for public comment and service on the AFL–CIO (61 FR 28053).

Determination of Eligibility

This Federal Register notice announces the eligibility of the North Carolina plan for final approval detertmination under section 18(e). (29 CFR 1902.39(c) requires that this preliminary determination of eligibility be made before section 18(e) procedures begin.) The determination of eligibility is based upon OSHA's findings that:

(1) The North Carolina plan has been monitored in actual operation for at least one year following certification. The results of OSHA monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are now prepared biennially and made available to the State and to the public. The results of OSHA's most recent post-certification monitoring are set forth in a biennial evaluation report covering the period of October 1, 1993 through September 30, 1995, and in a section 18(e) Evaluation Report of the North Carolina Plan, covering the period of October 1, 1995 through June 30, 1996, which have been made part of the record of the present proceedings.

(2) The plan meets the State's revised benchmarks for enforcement staffing. On June 4, 1996, pursuant to the terms of the Court Order and the 1980 Report to the Court in *AFL–CIO* v. *Marshall,* OSHA approved revised fully effective benchmarks of 64 safety and 50 health compliance officers for North Carolina based on an assessment of State-specific characteristics and historical experiences. North Carolina has allocated these positions, as evidenced by the FY 1996 Application for Federal Assistance in which the State has committed itself to funding the State share of salaries for 64 safety and 51 health compliance officers. The FY 1996 application has been made part of the record in the present proceeding.

(3) North Carolina participates and has assured its continued participation in the Integrated Management lnformation System (IMIS) developed by OSHA.

Issues for Determination in the 18(e) Proceedings

The North Carolina plan is now at issue before the Assistant Secretary for determination as to whether the criteria of section 18(c) of the Act are being applied in actual operation. 29 CFR 1902.37(a) requires the Assistant Secretary, as part of the final approval process to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). OSHA believes that the results of its evaluation of the North Carolina program as described in the most recent biennial evaluation report and the section 18(e) Performance Evaluation Report, considered in light of these regulatory criteria and the criteria in section 18(c) of the Act, indicate that

the regulatory indices and criteria are being met. The Assistant Secretary accordingly has made an initial determination that the North Carolina plan is eligible for an affirmative section 18(e) determination. This notice initiates proceedings by which OSHA expects to elicit public comment on the issue of granting an affirmative section 18(e) determination to North Carolina. In order to encourage the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

(a) Standards and Variances

Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate State standards and amendments at least as effective as the Federal standards. See §§ 1902.37(b)(3), 1902.3(c), 1902.4 (a) and (b). The North Carolina plan provides for adoption of standards, through an expedited process, which are in most cases identical to Federal standards. North Carolina's adoption process continues to meet the six-month time frame for adoption of OSHA standards requiring State action during the section 18(e) evaluation period. [18(e) Evaluation Report, p. 3]

Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure protection at least as effective as comparable Federal standards and enforcement procedures. While acknowledging prior approval of individual standards by the Assistant Secretary, this requirement stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902(c)(1), 1902.3(d)(l), 1903.4(a), and 1902.4(b)(2). As already noted, the North Carolina plan provides for adoption of standards identical to Federal standards. North Carolina also adopted interpretations which are identical to the Federal interpretations in most instances.

The State is required to take the necessary administrative judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is identical to the Federal standards or developed by the State. See § 1902.37(b)(5). No such challenge to State standards has ever occurred in North Carolina. [18(e) Evaluation Report, p. 3.]

When granting permanent variances from standards, the State is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if the standard were in effect. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). North Carolina had one request for a permanent variance during the 18(e) evaluation period. That request is currently under review by the State. [18(e) Evaluation Report, p. 3.]

Where a temporary variance is granted, the State must ensure, among other things, that the employer complies with the standard as soon as possible and provides appropriate interim employee protection. See §§ 1902.37(b)(7) and 1902.4(b)(2)(iv). The North Carolina temporary variance procedures require that any employer granted a temporary variance must have an effective program for coming into compliance with the standard as soon as possible. During the section 18(e) evaluation period, no temporary variance requests were received. [18(e) Evaluation Report. p. 3].

(b) Enforcement

Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA. Section 18(c)(3) requires the State plan to provide for right of entry and inspection of all work places at least as effective as that in section 8 of the Act

Inspection Targeting. The State inspection program must provide for sufficient resources to be directed to designated target industries while providing adequate protection to all other workplaces covered under the plan. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). North Carolina targets estabishments for programmed inspections based on industry injury/illness rates for safety and chemical exposure and violation experience for health. As of July 1992, the State began a priority targeting system directed at employers with a workers compensation experience rate modifier of 1.5 or greater. North Carolina has also implemented a cooperative compliance targeting program, known as the ''North Carolina 248'' program, which targets the 248 employers with the highest worker's compensation claim rates for a period of three years. Since the inception of the ''North Carolina 248'' program, 154 of the 248 establishments have received an inspection by NC–OSH. North Carolina continues to conduct a high percentage of all programmed inspections in the high hazard industries in the state. [18(e) Evaluation Report, p. 4–5].

Denials of Entry. In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9). 1902.3 (e) and (f), and 1902.4(c)(2) (I) and (ix). Title 40.1 of the Code of North Carolina allows the Commissioner to seek a warrant to permit entry into such establishment that has refused entry for the purpose of inspection or investigation. North Carolina obtained entry in 90% of refusals during this nine month evaluation period. [18(e) Evaluation Report, p. 6]

Inspection Procedures. Inspections must be conducted in a competent manner following approved enforcement procedures which include the requirement that inspectors acquire information adequate to support any citation issued. See §§ 1902.37(b)(10), 1902.3(d)(1), and 1902.4(c)(2). Procedures for the North Carolina occupational safety and health compliance program are set out in the North Carolina Field Operations Manual, which is patterned after the Federal manual, and thus follows inspection procedures, including documentation procedures, which are similar to Federal procedures. The Evaluation Report notes overall adherence by North Carolina to these procedures.

Identifying and Citing Hazards: North Carolina cited an average of 5 violations per safety inspection and 3.9 violations per health inspection. 30.7% of safety violations and 30.5% of health violations were cited as serious. The percentage of serious safety and health violations were lower than the comparable Federal percentages. The state continues to provide compliance officers with specific training and direction to ensure the proper classification of violations of standards. [18(e) Evaluation Report, p. 8]

Advance Notice: State plans must include a prohibition on advance notice, and exceptions must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). North Carolina adopted approved procedures for advance notice similar to the Federal procedures.

Employee Participation: State plans must provide for inspections in response to employee complaints, and must provide an opportunity for employee participation in State inspections. See § 1902.4(c) (I) through (iii). North Carolina has procedures

similar to Federal OSHA for processing and responding to complaints and providing for employee particpation in State inspections. The data indicates that during the evaluation period the State responded to 85% of serious safety and health complaints within the prescribed time frame of 30 days. No complaints were classified as imminent danger during the review period. [18(e) Evaluation Report, p. 7]

Nondiscrimination. State plans must also provide protection for employees against discrimination similar to that found in section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). Title 40.1 of the Code of North Carolina and State regulations provide for discrimination protection equivalent to that provided by Federal OSHA. Employees have up to 180 days to file a complaint, compared to the Federal 30 days. A total of 66 complaints alleging discrimination were received during the evaluation period, of which, only 6 had lapse times of more than 90 days from date of receipt to the date of determination. 60 of the cases had been settled, withdrawn, dismissed, or filed for litigation by the end of the period. [18(e) Evaluation Report, p. 13]

Citations and Proposed Penalties. The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2) (x) and (xi). The State's lapse time from last day of inspection to issuance of citation averaged 36.7 days for safety and 57.9 days for health. Both of the lapse times compare favorably to Federal OSHA's time lapse.

The State must propose penalties in manner that is at least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of comparable factors required in the Federal program. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c) (x) and (xi). North Carolina's procedures for penalty calculation are the similar to the Federal procedures. The section 18(e) Evaluation Report noted that North Carolina proposes appropriate penalties. The average penalty for serious safety violations was $1215.10 and the average serious health penalty was $1056.30. [18(e) Evaluation Report, p. 8–9]

Abatement. The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c) (vii) and (xi). North Carolina's abatement periods for serious violations averaged 15.5 days for safety and 6.8 days for health. [18(e) Evaluation Report, p.9]

Whenever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3 (d) and (g). The North Carolina section 18(e) Evaluation Report noted no instances of adverse adjudications.

(c) Staffing and Resources

The State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1), 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See section 18(c)(5) of the Act and § 1902.3(I). As discussed above, the North Carolina plan provides for 64 safety compliance officers and 51 industrial hygienists as set forth in the North Carolina FY 1996 grant. This staffing level meets the approved, revised ''fully effective'' benchmarks for North Carolina for health and safety staffing, as discussed elsewhere in this notice. At the close of the evaluation period the State had 60 safety and 47 health compliance officers positions filled. [18(e) Evaluation Report, p. 17]

North Carolina provides its safety and health personnel with formal training based on the needs of the staff and availability of funds. The OSHA Training Institute is utilized for staff training, and the State conducts quarterly conferences to train personnel in new and updated policy and technical changes. [18(e) Evaluation Report, p. 14]

(d) Other Requirements

Public Employees: States which have approved plans must maintain a safety and health program for State and local employees which must be as effective as the State's plan for the private sector. See § 1902.3(j). The North Carolina plan provides a program in the public sector which is comparable to that in the private sector, including assessment of penalties. Injury and illness rates are lower in the public sector than in the private. [18(e) Evaluation Report, p. 9–11]

Injury/Illness Rates: As a factor of its section 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See § 1902.37(b)(15). In 1994, the private sector rate for all industries remained at 3.5 as it has been since 1989. There were slight increases in, manufacturing—1993–4.0, 1994–4.1, and construction—1993–4.7, 1994–5.1, but both areas were still below the nationwide rate of 3.8 for all industries, 5.5 for manufacturing, and 5.5 for construction. [18(e) Evaluation Report, p. 18]

Required Reports: State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect. See section 18(c)(7) of the Act; 29 CFR 1902.3(k). The plan must also provide assurance that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require. Section 18(c)(8) of the Act; 29 CFR 1902.4(1). North Carolina employer recordkeeping requirements are identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illness and Injuries. As noted above, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

Voluntary Compliance: Section 1902.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. In the private sector the State conducted 178 employer and employee training sessions with 3,117 employer attendees and 5,445 employee attendees at the sessions. The State, through a cooperative agreement with the North Carolina Community College System Small Business Centers, also participated in conducting 43 workshops covering several safety and health subjects. [18(e) Evaluation Report, p.14]

The State has entered into a partnership with North Carolina State University to provide comprehensive ergonomic services to citizens and employers through the Ergonomics Resource Center. The Center has developed a comprehensive outreach program which includes education, research, on-site consultation, technology transfer and monitoring, on a fee basis. The Center has been selected as one of the semi-finalists in the 1996 Innovations in American Government Awards program.

North Carolina also has initiated a Cooperative Assessment Program for ergonomics which encourages employers to voluntarily address ergonomic problems through an agreement similar to a post-citation settlement agreement. The State has also entered into a Memorandum of Understanding with the State Department of Agriculture, Meat and Poultry Inspection Services to train MPIS inspectors to recognize and address workplace hazards.

In addition, on-site consultation services are provided in the public sector. (The State's on-site consultation program for the private sector is conducted apart from the State plan under an agreement with OSHA under section 7(c)(1) of the OSH Act.)

Effect of § 18(e) Determination

If the Assistant Secretary, after completion of the proceedings described in this notice, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to issues covered by the North Carolina plan, as provided by Section 18(e) of the Act and 29 CFR 1902.42(c). North Carolina has excluded from its plan: Safety and health coverage in private sector maritime activities (enforcement of occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments). In addition, North Carolina does not cover employment on Indian reservations, enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government, railroad employment, and enforcement on military bases. Thus, Federal coverage of these areas would be unaffected by an affirmative section 18(e) determination.

In the event an affirmative section 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the Federal Register in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal authority is withdrawn, will state that Federal authority with respect to enforcement under section 5(a)(1) of the Act and discrimination complaints under section 11(c) of the Act remains in effect, and will state that if continuing evaluations show that the State has failed to maintain a compliance staff which meets the revised fully effective benchmarks, or has failed to maintain a program which is at least as effective as the Federal, or that the State has failed to submit program change supplements as required by 29 CFR Part 1953, the Assistant Secretary may revoke or suspend final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State plan. At the same time, Subpart C of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the North Carolina plan, would be amended to reflect the section 18(e) determination if an affirmative determination is made.

Documents of Record

All information and data presently available to OSHA relating to the North Carolina section 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. The contents of the record are available for inspection and copying at the following locations:

Docket Office, Room N–2625, Docket No. T–031, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1375 Peachtree Street, N.E., Suite 587, Atlanta, Georgia 30367; and North Carolina Department of Labor, Division of Occupational Safety and Health, 319 Chapanoke Road—Suite 105, Raleigh, North Carolina 27603–3432.

To date, the record on final approval determination includes copies of all Federal Register documents regarding the plan, including notices of plan submission, initial Federal approval, certification of completion of developmental steps, codification of the State's operational status agreement, and other plan supplements. The record also includes the State plan document, which includes a plan narrative, the State legislation, regulations and procedures, an organizational chart for State staffing; the State's FY 1997 Federal grant; and the October 1, 1995 through June 30, 1996 18(e) Evaluation Report and all previous, post-certification reports.

Public Participation

Request for Public Comment and Opportunity To Request Hearing

The Assistant Secretary is directed under § 1902.41 to make a decision whether an affirmative section 18(e) determination is warranted or not. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by North Carolina of the requirements of section 18(c) of the Act and all specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and indices must be considered in light of the factors in 29 CFR 1902.37 (b)(1) through (15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during an informal public hearing, if held, is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, criteria and factors presented in 29 CFR Part 1902, as they apply to North Carolina State plan, are available to the Assistant Secretary during this administrative proceeding.

Interested persons are invited to submit written data, views, and arguments with respect to this proposed section 18(e) determination. These comments must be received on or before *(30 days)* and submitted in quadruplicate to the Docket Officer, Docket No. T–031, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. The State of North Carolina will be afforded the opportunity to respond to each submission.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed section 18(e) determination. Such requests also must be received on or before (30 days) and should be submitted in quadruplicate to the Docket Officer, Docket T–031, at the address noted above. Such requests must present particularized written objections to the proposed section 18(e) determination. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish his decisions in the Federal

Register. All written and oral submissions, as well as other information gathered by OSHA, will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing and all materials submitted in response to this notice and at any subsequent hearing, will be available for inspection and copying in the Docket Office, Room N–2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in North Carolina under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations. Law enforcement, Occupational safety and health, Occupational Safety and Health Administration.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667): 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736))

Signed at Washington, DC, this 6th day of September, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–23459 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5609–5]

40 CFR Ch I

Notice of First Meeting of the Industrial Combustion Coordinated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of the Industrial Combustion Coordinated Rulemaking Advisory Committee first meeting date.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, § 9(c), EPA published a notice of the establishment of the Industrial Combustion Coordinated Rulemaking Advisory Committee (hereafter referred to as the Coordinating Committee) in the Federal Register on August 2, 1996 (61 FR 40413). The purpose of today's action is to announce the first meeting date of the Coordinating Committee and associated Work Groups.

DATES: The first meeting of the Industrial Combustion Coordinated Rulemaking (ICCR) Coordinating Committee will be held on October 1, 1996 and the morning of October 2, 1996. The meeting on October 1 will start at 9:00 a.m. The first Work Group meetings will be held on October 2, 1996, starting in the mid-morning.

ADDRESSES: The October 1 and 2, 1996 Coordinating Committee meeting will be held at the Omni Europa Hotel, 1 Europa Drive, Chapel Hill, North Carolina. The phone number for the hotel is (919) 968–4900. The Work Group meetings will be held on October 2, 1996 beginning about mid-morning at the same location.

FOR FURTHER INFORMATION CONTACT: Fred Porter, Combustion Group, U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, (919) 541–5251; or Sims Roy at the same address, (919) 541–5263.

SUPPLEMENTARY INFORMATION:

Inspection of Documents: Docket

Minutes of the meetings, as well as other relevant material will be available for public inspection at EPA Air Docket No. A–96–17 and is also available on the Technology Transfer Network (see below). The docket is open for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC 6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Technology Transfer Network

The TTN is one of EPA's electronic bulletin boards. Meeting agendas, meeting minutes, schedules, and documents developed by the ICCR Coordinating Committee and Work Groups will be posted on the TTN. Information on the ICCR can be downloaded by choosing the ''ICCR-Industrial Combustion Coordinated Rulemaking Process'' selection from the Technical Information Areas menu. The service can be accessed by modem or through the Internet and is free. Dial (919) 541–5472 for up to a 14,400 bits-per-second (bps) modem. Alternatively, access the system through Telnet at ''ttnbbs.rtpnc.epa.gov'' or through the World Wide Web at ''http://ttnwww.rtpnc.epa.gov''. If more information on the TTN is needed, call the help desk at (919) 541–5384.

Additional Information

Two copies of the Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request. The purpose of the Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The regulations will cover boilers, process heaters, industrial/commercial and other (non-hazardous) waste incinerators, stationary internal combustion engines, and stationary gas turbines.

The Coordinating Committee will provide a means for considering important regulatory issues and building stakeholder consensus on these issues prior to proposal. The Committee will establish Work Groups as necessary to fulfill these objectives. The EPA will recommend Work Group membership for approval by the Coordinating Committee at the October 1, 1996 Coordinating Committee meeting. However, it is expected that Work Group membership will remain open for a period of time so that adjustments can be made. The first Work Group organizational meetings will take place on October 2, 1996, beginning about mid-morning and will consist of two combined meetings. One Work Group meeting will be a combination of the boilers, process heaters, and incinerators Work Groups; the other Work Group meeting will be a combination of the stationary internal combustion engines and stationary gas turbines Work Groups. The Work Groups for Test Methods and Economics will also meet either separately or combined with one of the Work Groups mentioned above.

The general agenda for the first Coordinating Committee meeting is as follows:

October 1: 9:00 a.m.—5:00 p.m.
- Welcome and Introductions
- Summary of ICCR Goals and Structure Activities to Date
- Review, Discussion, and Approval of ICCR Document [1]
- Communication Methods and

[1] Industrial Combustion Coordinated Rulemaking—Proposed Organizational Structure and Process. June 1996.

Procedures
October 2: Morning
Review, Discussion, and Approval of ICCR Document (Continued)
Summary of Next Steps and Adjournment

The general agenda for each of the two Work Group meetings is as follows:

October 2: Mid-Morning—4:30 p.m.
Welcome and Introduction
Activities to Date
Source Work Group Goals and Activities
Review and Discussion of Procedural Ground Rules
Discussion of Issues, Timeframe, and Schedule
Summary of Next Steps and Adjournment

FACA requires that the Coordinating Committee meetings be open to the public, and that there be an opportunity for interested persons to file comments before or after meetings, or to make statements as permitted by the Coordinating Committee's guidelines and to the extent time permits. In accordance with these requirements, the first and subsequent meetings of the Coordinating Committee will be open to the public. While the Work Groups are not chartered under FACA, the Work Group meetings will also be open to the public. Any comments can be sent to the docket at the address listed under ''Inspection of Documents''.

Dated: September 9, 1996.

Mary D. Nichols,

Assistant Administrator.

[FR Doc. 96–23519 Filed 9–12–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NM29–1–7272b; FRL–5550–1]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes to approve a revision to the New Mexico State Implementation Plan (SIP) for the Albuquerque/Bernalillo County nonattainment area that contains general conformity rules. Specifically, the general conformity rules, if approved, will enable the Albuquerque/Bernalillo County Air Quality Control Board to review conformity of all Federal actions (see 40 CFR Part 51, Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans) with the control strategy SIP's submitted for the nonattainment and maintenance areas within the boundary of Bernalillo County. This proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. The Federal actions by the Federal Highway Administration and Federal Transit Administration (under 23 U.S.C. or the Federal Transit Act) are covered by the transportation conformity rules under 40 CFR Part 51 Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The EPA approved the Albuquerque/Bernalillo County transportation conformity SIP on November 8, 1995 (60 FR 56241).

In the Final Rules Section of this Federal Register, the EPA is approving this General Conformity SIP revision as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in providing comments on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing, postmarked by October 15, 1996. If no adverse comments are received, then the direct final rule will be effective on November 12, 1996.

ADDRESSES: Copies of the Albuquerque/Bernalillo County General Conformity SIP and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day:

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Air Pollution Control Division, Albuquerque Environmental Health Department, One Civic Plaza, Albuquerque, New Mexico 87103, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 24, 1996.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 96–23266 Filed 9–12–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[LA 25–1–6964b; FRL–5549–8]

Approval and Promulgation of Implementation Plan for Louisiana: General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes to conditionally approve the Louisiana State Implementation Plan (SIP) revision that contains regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993 (58 FR 63214). Specifically, the general conformity rules, if approved, will enable the Louisiana Department of Environmental Quality to review conformity of all Federal actions (see 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans) with the control strategy SIP's submitted for the nonattainment and maintenance areas. This proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. The Federal actions by the Federal Highway Administration and Federal Transit

Administration (under 23 U.S.C. or the Federal Transit Act) are covered by the transportation conformity rules under 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The EPA will act on the State's transportation conformity SIP under a separate Federal Register document.

In the Final Rules Section of this Federal Register, the EPA is approving this General Conformity SIP revision as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in providing comments on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing, postmarked by October 15, 1996. If no adverse comments are received, then the direct final rule will be effective on November 12, 1996.

ADDRESSES: Comments should be mailed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address below. Copies of the State's General Conformity SIP and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day:

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Air Quality Division, Louisiana Department of Environmental Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, Telephone: (504) 765–0219.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 24, 1996.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 96–23265 Filed 9–12–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2780

[WO–RIN 1004–AC53]

Special Areas: State Irrigation Districts

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to remove regulations concerning the establishment and operation of state irrigation districts, from the Code of Federal Regulations. BLM believes these regulations are obsolete because there is only one record in BLM of their use in the last 40 years.

DATES: Any comments must be received by BLM at the address below on or before November 12, 1996. Comments received after the above date will not necessarily be considered in the decisionmaking process on 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 WOComment@WO0033wp.wo.blm.gov. Please include ''attn: RIN 1004–AC53'' 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., N.W., 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

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment addresses. BLM may not necessarily consider or include in the Administrative Record for the rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background and Discussion of Proposed Rule

This proposed rule will remove 43 CFR part 2780, Special Areas: State Irrigation Districts, from the Code of Federal Regulations. The regulations in part 2780 implement the Act of August 11, 1916 entitled ''An Act to Promote the Reclamation of Arid Lands,'' 43 U.S.C. 621 et seq. Part 2780 was originally issued as Circular Number 592 on March 6, 1918, and has existed in similar form since modified in 1922 to accommodate amendments to the Act. These regulations describe the procedures a state irrigation district uses to apply for secretarial approval of an irrigation plan. If an application is approved, all unentered public lands within the state irrigation district, and entered lands for which no certificate has been issued, are subject to the same provisions of State law relating to the reclamation of arid lands for agricultural purposes as those which apply to private lands within the district. Such lands are subject to a lien for all taxes and assessments lawfully levied by the district on unpatented land. The district also has the right to sell land that was

entered at the time of a tax levy for nonpayment of tax.

We have only one record at BLM of any activity in this program during the last 40 years, occurring in 1971. We accessed our online case recordation system and found no other record of any recent case activity. We also searched a legal data base and found that the last time the statute or implementing regulation was cited in a reported civil case was in 1948. The program's inactivity and absence of civil case citations indicate that this regulation may be obsolete. Furthermore, we believe that the regulations are impractical to administer due to the scarcity of water in public land states for agricultural purposes. For these reasons, we believe that continued publication of 43 CFR part 2780 is unnecessary and contrary to the public interest.

III. Procedural Matters

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA), and has found that the proposed 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 has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. The BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**), and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the ''*Written Comments*'' section above, or contact us directly.

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 proposed 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 proposed rule is not a significant regulatory action. As such, the proposed 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 part 2780 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 BLM preparation of a Federalism Assessment (FA).

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 proposed 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 proposed rule is Jeff Holdren, Realty Use Group, assisted by Ian Senio, Regulatory Management Team, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240; Telephone 202/452–7779.

List of Subjects for 43 CFR Part 2780

Irrigation, Public lands—sale, Reclamation.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 2780 of group 2700, subchapter B, chapter II of title 43 of the Code of Federal Regulations is removed.

Dated: September 4, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96–23332 Filed 9–12–96; 8:45 am]

BILLING CODE 4310–84–P

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43 CFR Part 5510

[WO–350–1430–00 24 1A]

RIN 1004–AC92

Use by Settlers and Homesteaders of Timber on Their Pending Claims and Free Use of Timber Upon Oil and Gas Leases

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 regulations which govern the free use of timber on public lands and upon oil and gas leases because they are obsolete and have not been used in many years.

DATES: Submit comments by October 15, 1996. BLM may, but need not, consider comments received or postmarked after this date in preparing the final rule.

ADDRESSES: Comments 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, 1949 C Street, NW, Washington, DC 20240. Commenters may transmit comments electronically via the Internet to: WOComment@WO0033wp.wo.blm.gov. [For internet, please include ''Attn: AC92'', your name, and return 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: Jeff Holdren, (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. If comments are received 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

Section 5511.1–2 of 43 CFR describes procedures that homesteaders may use to obtain free use of timber on public lands. However, no applications have been submitted to BLM under this subpart for many years, principally because of two laws. First, the Taylor Grazing Act of June 28, 1934 (43 U.S.C. 315–315r), requires that lands be classified for the proposed use before occupancy on the land is allowed. Secondly, section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, repealed the homestead laws which, in effect, rendered unnecessary the regulatory requirements of Section 5511.1–2.

Similarly, the procedures under Section 5511.1–4, which lessees must use to obtain free use of timber on oil and gas leases, are outmoded. No applications under this subpart have been submitted to BLM in many years, principally because oil and gas lessees no longer need to use timber on their leases. Lessees now have access to modern industrial techniques.

Because Sections 5511.1–2 and 5511.1–4 are obsolete and there are no pending applications, these regulations serve no useful purpose. Removing these subparts will meet an objective of the Administration to eliminate outdated and unnecessary regulations from the CFR.

III. Procedural Matters

National Environmental Policy Act of 1969

The proposed rule is administrative and procedural in nature. It, therefore, is categorically excluded from the study process required by the National Environmental Policy Act of 1969 (42 U.S.C. 4331(2)(C)), pursuant to 516 Departmental Manual (DM), Chapter 2, Item 1.10, and it would not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2. Under the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions that 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. Neither an environmental assessment nor an environmental impact statement is required for categorically excluded actions.

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.*

Regulatory Flexibility Act

BLM has determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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, or 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, Federalism, 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 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, Civil Justice Reform.

Executive Order 12866

The proposed rule does not meet the criteria for a significant regulatory action requiring review by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review.

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 5510

Forests and forest products, Public lands.

For the reasons stated in the preamble, 43 CFR part 5510 is amended as follows:

PART 5510—[AMENDED]

1. The authority citation for part 5510 continues to read as follows:

Authority: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, R.S. 2478, sec. 32, 41 Stat. 450; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 48 U.S.C. 423, 43 U.S.C. 1201, 30 U.S.C. 189.

§ 5511.1–2 [Removed]

§ 5511.1–4 [Removed]

2. Sections 5511.1–2 and 5511.1–4 are removed.

Dated: September 4, 1996.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 96–23333 Filed 9–12–96; 8:45 am]

BILLING CODE 4310–84–M

Notices

Federal Register
Vol. 61, No. 179
Friday, September 13, 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. FV96–501–N]

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 fruit, vegetable and ornamental industry to improve or change the procedures for collecting information used to compile and generate new and expand existing fruit, vegetable and ornamental reports to assist the trade in making production and marketing decisions.

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

Additional Information or Comments: Contact Terry C. Long, Chief; Fruit and Vegetable Market News Branch, Fruit and Vegetable Division, AMS–USDA, Room 2503 South Building, P.O. Box 96456, Washington, D.C. 20090–6456; Telephone: (202) 720–2745, Fax: (202) 720–0547.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Vegetable Market News.

OMB Number: 0581–0006.

Expiration Date of Approval: October 31, 1996.

Type of Request: Extension and revision of a currently approve information collection.

Abstract: Collection and dissemination of information for fruit, vegetable and ornamental production and to facilitate trading by providing a price base used by producers, 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 basic, 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 fruit and vegetable market news reports are used by academia, but are primarily used by the fruit, vegetable and ornamental trade, which includes packers, processors, brokers, retailers, and producers. The fruit and vegetable industry requested that the Department of Agricultural issue price and supply market reports for commodities of regional, national and international significance 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, as needed, to keep them appraised of the current market conditions and movement of fruit, vegetable, and ornamental commodities in the United States. Economists at most major agricultural colleges and universities use the reports to make both short and long term market projections. 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 purchaser of fruits and vegetables, 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 .033 hours per response.

Respondents: Fruit, Vegetable and ornamental industry, or other for-profit businesses, individuals or households, farms, or Federal Government.

Estimated Number of Respondents: 18,633.

Estimated Number of Responses per Respondents: 200.

Estimated Total Annual Burden on Respondents: 122,978 hours.

Copies of this information collection can be obtained from Terry C. Long, Chief Fruit and Vegetable Market News Branch, at (202) 720–2745.

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: Terry C. Long, Chief, Fruit and Vegetable Market News Branch, Fruit and Vegetable Division, AMS–USDA, Room 2503 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 9, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–23457 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

[Docket No. 96–065–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approved information collection extension; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of animal disease control programs.

DATES: Comments on this notice must be received by November 12, 1996 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 96–065–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 96–065–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information on the use of VS Form 10–4, contact Dr. Keith Hand, Senior Staff Veterinarian, National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231, (301) 734–7835; or e-mail: KHand@aphis.usda.gov. For copies of more detailed information, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Laboratory Specimen Submission.

OMB Number: 0579–0090.

Expiration Date of Approval: January 31, 1996.

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

Abstract: Three years ago the Salmonella Enteritidis (SE) Control Program was implemented in an effort to reduce the number of human SE outbreaks and to prevent harm to the egg-type poultry industry. The program entailed the use of a number of forms to collect information that would enable us to identify SE infected flocks.

This program, however, has now been transferred to the Food Safety and Inspection Service (FSIS). Therefore, APHIS no longer needs OMB approval for most of the forms that were being used to conduct this program.

One of the forms, VS Form 10–4, is a standard form that is routinely used when specimens (such as blood, milk, tissue, or urine) from any animal (including cattle, swine, sheep, horses, or poultry) are submitted to our National Veterinary Services Laboratories for disease tests. This VS Form 10–4 identifies the herd or flock from which the specimens were taken, the purpose for submitting the specimens, the type of specimen submitted, and the species of animal from which the specimen was taken.

We are seeking OMB approval to continue the use of this VS Form 10–4.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: State and Federal veterinarians, accredited veterinarians.

Estimated Number of Respondents: 12,000.

Estimated Number of Responses per Respondent: 2.524.

Estimated Total Annual Burden on Respondents: 15,149 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection.

Done in Washington, DC, this 9th day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–23496 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–34–P

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—WIC Iron Deficiency Anemia Study

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request OMB review of the WIC Iron Deficiency Anemia Study.

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

ADDRESSES: 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 E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

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: Michael E. Fishman, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: WIC Iron Deficiency Anemia Study.

OMB Number: Not yet assigned.

Expiration Date: N.A.

Type of Request: New collection of information.

Abstract: The study, being undertaken jointly by FCS and the Centers for Disease Control and Prevention (CDC), will investigate the prevalence and etiology of anemia in selected communities reporting high rates of anemia to PedNSS, which do not appear to be explained by administrative or reporting error and/or faulty laboratory procedures.

Approximately 2000 one year old children in eight WIC clinics reporting high rates of anemia to (PedNSS) will receive several additional tests to determine iron status in addition to the hemoglobin or hematocrit typically required for WIC certification. Venipuncture blood samples will be drawn by a qualified phlebotomist.

Analysis of the blood samples will be conducted primarily by CDC's Nutritional Biochemistry Laboratory. A brief questionnaire will be administered to the child's parent or caretaker to assess dietary intake, and check for the presence of other factors that may influence test results. The questionnaire and the blood test will be administered during the regular WIC certification visit; no additional clinic visits will be required. Participation in the study is optional. If feasible, the study will also include 4 sites serving one year old children not participating in WIC, but located in close proximity to 4 of the WIC sites, to enable a broader assessment of the magnitude, distribution and etiology of the problem of anemia within the affected communities, and the role of the WIC Program. The number of children is expected to average 233 per clinic, for a total sample size of about 2,800, including non-WIC children. The project is currently under review by CDC's Institutional Review Board (IRB) in accordance with federal requirements for the protection of human subjects of research (45 CFR Part 46; 7 CFR Part 1c).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes for each parent or caretaker of a child participating in the study.

Respondents: Respondents are the parents or caretakers of WIC and non-WIC children participating in the study.

Estimated Number of Respondents: 2000 children participating in WIC, and 800 children not participating in WIC.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 700 hours. Copies of this information collection can be obtained from Janet Schiller, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

William E. Ludwig,

Administrator, Food and Consumer Service.

Dated: September 30, 1996.

[FR Doc. 96–23412 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on September 19 and September 20, 1996 at the Tree House Inn Conference Room, I–5 and Lake Street, Mt. Shasta, California. The meeting on Thursday, September 19, will begin at 9:30 a.m. and continue until 5:00 p.m. The meeting on Friday, September 20 is a field trip and will convene at 8:00 a.m., leaving from the Tree House Inn. The field trip will adjourn at approximately 3:30 p.m. Agenda items to be covered include: (1) information on a proposed social assessment contract for the 9 northern counties of California; (2) a report on the findings from the implementation monitoring task group; (3) a salvage subcommittee report; (4) a report on the 3 PIEC meeting; (5) standing committee reports; and (6) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1309.

Dated: September 4, 1996.

Barbara Holder,

Designated Federal Official.

[FR Doc. 96–23410 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Announcement of Applications Received Under the Distance Learning and Telemedicine Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of applications received.

SUMMARY: The Rural Utilities Service (RUS) hereby announces the applications received during the 1996 fiscal year (FY) application filing deadline for the Distance Learning and Telemedicine Grant Program.

FOR FURTHER INFORMATION CONTACT: Jonathan Claffey, Acting Deputy Director, Advanced Telecommunications Services Staff, U.S. Department of Agriculture, Rural Utilities Service, STOP 1701, Room 2832, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–1701. Telephone: (202) 720–0530. FAX: (202) 720–2734.

SUPPLEMENTARY INFORMATION: RUS is hereby publishing the names of the organizations which applied for grants under 7 CFR Part 1703, Subpart D, Distance Learning and Telemedicine Grant Program.

These applications contained herein, submitted and postmarked on or before the August 5, 1996 filing deadline, will be considered for funding during FY 1996. The maximum amount awarded to any application selected for FY 1996 will not exceed $350,000, as previously published on June 27, 1996, at 61 FR 33639.

Pursuant to RUS regulations at 7 CFR 1703.113, Application filing dates, location, processing, and public notification, the applicants are as follows:

Applicant	State	Grant funds requested
Bristol Bay Area Health Corporation	AK	$350,000
Bartlett Regional Hospital	AK	65,606
Council Of Athabascan Tribal Government	AK	331,605
University Of Alaska Anchorage	AK	236,623
Maniilaq Association, Inc.	AK	324,832
The Southeast Alabama Regional Planning And Development	AL	350,000
Northeast Alabama State Community College	AL	350,000
Carraway Methodist Health Systems	AL	285,000
Vaughan Rural Healthcare Partnership	AL	336,495
Fayette County Board Of Education	AL	189,280
University Of Arkansas Cooperative Extension Service	AR	350,000
Northern Arizona Regional Behavioral Health Authority	AZ	350,000
Arizona Board Of Regents University Of Arizona	AZ	141,150
Pinal County Cities In Schools	AZ	66,249

Applicant	State	Grant funds requested
Golden Valley Health Centers	CA	154,207
Colusa Community Hospital	CA	98,035
Amador County Unified School District	CA	245,000
Bishop Indian Tribal Council	CA	132,616
Riverside County Department Of Mental Health	CA	131,537
California Rural Indian Health Board, Inc.	CA	350,000
Mendocino Coast Health Care District	CA	117,810
Butte—Glenn Community College District	CA	350,000
Children's Hospital—San Diego	CA	349,000
Mono County Office Of Education	CA	96,260
Carissa Plains Elementary School	CA	56,333
Trinidad State Junior College	CO	348,260
Trinidad State Junior College 2	CO	343,350
Plateau Valley School District #50	CO	210,000
Lamar Community College	CO	185,789
St. Mary's Hospital & Medical Center, Inc.	CO	306,075
District School Board Of Pasco County	FL	350,000
Mariners Hospital & Homestead Hospital	FL	350,000
Satilla Health Services, Inc.	GA	150,000
St. Francis Healthcare Foundation Of Hawaii	HI	96,327
American Samoa Power Authority	HI	138,955
Decatur County Hospital	IA	245,394
Waverly Public Library	IA	232,586
Des Moines Public Schools	IA	280,000
Lake Mills Community School	IA	350,000
Merged Area (education) V Community College District	IA	350,000
Manning General Hospital	IA	151,000
Idaho State Board Of Education	ID	172,375
Boise State University	ID	339,250
Hamilton-Jefferson Counties Regional Office Of 5	IL	350,000
Pembroke Community Consolidated School District	IL	245,000
Shawnee Library System	IL	80,000
Lincoln Land Community College	IL	350,000
Brooklyn/Lovejoy School District #188	IL	203,000
Ivy Tech State College	IN	346,524
Horizons Mental Health Center, Inc.	KS	105,000
Cowley County Community College	KS	283,828
Fort Hays State University	KS	318,000
Interlocal #621	KS	304,500
Southeast Community College	KY	345,870
The Center For Rural Development	KY	313,900
Kentucky Science & Technology Council, Inc.	KY	207,140
Pulaski County Board Of Education	KY	248,600
Bluegrass Regional Mental H–M Retardation Board	KY	350,000
Jewish Hospital Healthcare Services	KY	256,432
Allen Parish School Board	LA	350,000
Schumpert Medical Center	LA	350,000
Allen Parish Hospital Service District 3	LA	50,000
Northeast Louisiana Health Network, Inc.	LA	350,000
Acadia St. Landry Hospital Service District	LA	50,000
Curtis National Hand Center	MD	214,000
Garrett Community College	MD	241,637
Midmichigan Regional Health System, Inc.	MI	350,000
Hillsdale County Intermediate School District	MI	350,000
Upper Peninsula Health Care Network, Inc.	MI	341,100
Gaylord Community Schools	MI	265,000
Beaver Island Rural Health Center	MI	130,729
Scheurer Hospital	MI	157,500
Arlington Municipal Hospital	MN	203,756
Northwest Technical College	MN	100,000
Educational Telecommunications Of Missouri	MO	348,533
Fairfax Community Hospital Assc., Inc.	MO	150,000
Junior College District Of Jefferson County	MO	350,000
Delta Research Center	MO	160,000
The Institute For Community Health Education	MO	72,919
Boone Hospital Center	MO	350,000
North Mississippi Health Services, Inc.	MS	350,000
School District No. 55 H / High Plains Education	MT	224,135
Montana State University—Northern	MT	278,691
Sweet Grass County High School	MT	339,906
Dawson Community College	MT	350,000
Mountain Area Health Education Foundation, Inc.	NC	350,000
Perquimans County Schools	NC	153,000

Applicant	State	Grant funds requested
Montgomery Community College	NC	127,598
Watauga County Board Of Education	NC	188,532
Regional Education Service Alliance	NC	350,000
North Central School District	ND	312,009
Medcenter One Health Systems	ND	303,996
Catholic Family Service	ND	346,860
Rural Health Partners, Inc.	NE	350,000
Bryan Memorial Hospital	NE	308,990
Educational Service Unit No. 5	NE	350,000
The Board Of Regents Of New Mexico State University	NM	132,330
Des Moines Municipal Schools	NM	314,050
University Of New Mexico	NM	170,555
Alamo Navajo School Board, Inc.	NM	320,188
Regents Of New Mexico State University	NM	304,837
Salamanca Hospital District Authority	NY	110,000
Marble City Housing Corporation	NY	50,000
Cornell Cooperative Extension Of Rensselaer Co.	NY	350,000
Research Foundation Of Suny	NY	350,000
The Sage Colleges	NY	350,000
Ohio University	OH	345,837
Southwestern Oklahoma Teleeducation Consortium	OK	79,000
Southwestern Oklahoma State University	OK	210,906
St. Charles Medical Center Foundation	OR	350,000
College Misericordia	PA	221,060
Brandywine Hospital	PA	106,651
Greene County Vocational-Technical School	PA	350,000
Allegheny-Singer Research Institute	PA	226,425
Florence-Darlington Technical College	SC	253,102
University Of South Carolina	SC	349,200
Rapid City Regional Hospital	SD	350,000
Deubrook School District No. 5–6	SD	350,000
Lake Area Interactive	SD	350,000
Landmann-Jungman Memorial Hospital	SD	50,000
Southeast South Dakota Distance Learning Challenge	SD	350,000
The Evangelical Lutheran Good Samaritan Society	SD	350,000
Huron Regional Medical Center	SD	173,650
Right Turn, Inc.	SD	188,835
St. Luke's Midland Regional Medical Center	SD	350,000
Sequatchie County Board Of Education	TN	51,250
Middle Tennessee State University	TN	309,995
Jackson-Madison County Hospital District	TN	240,000
Hubbard Independent School District	TX	249,492
Medina Community Hospital	TX	75,000
Midland College	TX	350,000
Hendrick Medical Center	TX	350,000
Servcorp	TX	82,992
Southwest Texas Junior College	TX	349,650
The University Of Texas-pan American	TX	348,880
Rio Grande City Consolidated Independent School District	TX	348,880
University Of Texas Medical Branch At Galveston	TX	350,000
Clint Independent School District	TX	211,230
Chaparral Health Clinic Corporation	TX	89,750
Wharton County Junior College	TX	305,484
Utah State University	UT	279,550
WCDC's Pediatric Nutrition Surveillance System (eber State University	UT	115,000
Utah State University	UT	94,567
Rural Utah Telemedicine Associates	UT	347,206
Campbell County School Division	VA	168,000
Southwest Virginia Education And Training Network	VA	177,600
Scott County Telephone Cooperative	VA	327,789
Univ Of Vt And State Agricultural College	VT	135,184
Wyoming Medical Center, Inc.	WY	314,922

Dated: September 9, 1996.

Wally Beyer,

Administrator.

[FR Doc. 96–23511 Filed 9–12–96; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 15, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 19, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 F.R. 37719) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

2. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Food Service Attendant, Beale Air Force Base, California

Grounds Maintenance, Department of Veterans Affairs Medical Center, Salisbury, North Carolina

Janitorial/Custodial, Brought Fitness Center, Building 320, Fort Sam Houston, Texas

Painting Service, Travis Air Force Base, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–23522 Filed 9–12–96; 8:45 am]

BILLING CODE 6353–01–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 15, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Folder, IRS Tax Form, Document No. 6982
NPA: The Clovernook Center, Opportunities for the Blind, Cincinnati, Ohio

Services

Administrative Services, General Services Administration, PBS, Laguna Niguel Field Offices, Laguna Niguel, California
NPA: Goodwill Industries of Orange County, Santa Ana, California

Disposal Support Services, Columbus Air Force Base, Mississippi
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama

Janitorial/Custodial, Child Care Center Buildings, Luke Air Force Base, Arizona
NPA: The Centers for Habilitation/TCH, Tempe, Arizona

Janitorial/Custodial, U.S. Customs House, New Bedford, Massachusetts
NPA: The Opportunity Center of Greater New Bedford, Inc., New Bedford, Massachusetts

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–23523 Filed 9–12–96; 8:45 am]

BILLING CODE 6353–01–M

Additions to the Procurement List; Correction

In the document appearing on page 45934, FR Doc. 96–22258, in the issue of August 30, 1996, in the third column, the item listed as Administrative/ General Support Services, (GSA/FSS Region 7), General Products Commodity

Center, Fort Worth, Texas (Up to 50% of the Government's requirement) should read Temporary Administrative/ General Support Services for Texas, Oklahoma, Louisiana, Arkansas and New Mexico (Up to 50% of the Government's requirement).

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–23524 Filed 9–12–96; 8:45 am]

BILLING CODE 6353–01–M

DEPARTMENT OF COMMERCE

[Docket No. 960828234–6234–01]

RIN 0690–AA25

Guidelines for Empowerment Contracting

AGENCY: Department of Commerce.

ACTION: Proposed guidelines; request for comment.

SUMMARY: The Department of Commerce is issuing these proposed guidelines requesting public comment on policies and procedures intended to promote economy and efficiency in Federal procurement by granting qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress. This action is taken in accordance with the President's Executive Order entitled, ''Empowerment Contracting.'' The standards set forth in these proposed guidelines will serve as the basis for a proposed revision to the Federal Acquisition Regulation (''FAR''). Information obtained from public comment on these guidelines will be used to help draft the proposed FAR revision.

DATES: Comments must be submitted on or before October 15, 1996.

ADDRESSES: Comments may be mailed to the Department of Commerce, Office of the Assistant General Counsel for Finance and Litigation, Room 5896, 14th and Constitution Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joe Levine, 202–482–1071.

SUPPLEMENTARY INFORMATION: On May 21, 1996, President Clinton issued Executive Order 13005, ''Empowerment Contracting'' (the ''Order''). The purpose of the Order is to strengthen the economy and secure broad-based competition for Federal contracts by fostering growth of Federal contractors in economically distressed communities. In the Order, the President charged the Secretary of Commerce (the ''Secretary''), in consultation with the Secretaries of Housing and Urban Development, Labor and Defense; and the Administrators of the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Office of Federal Procurement Policy, to develop policies and procedures to ensure that Federal agencies, when awarding contracts in unrestricted competitions, grant qualified large and small businesses appropriate price or evaluation incentives to encourage business activity in areas of general economic distress.

Specifically, the Order requires the Secretary to ''develop policies and procedures to ensure that agencies, to the extent permitted by law, grant qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress, including a price or a non-price evaluation credit, when assessing offers for government contracts in unrestricted competitions, where the incentives would promote the policy set forth in this Order.'' The Order also calls upon the Secretary to (1) monitor the implementation and operation of the procedures developed; (2) ensure proper administration of the program and reduce the potential for fraud by intended beneficiaries; (3) develop a process to evaluate the effectiveness of the procedures developed; and (4) issue an annual report to the President on the status and effectiveness of the program. In addition, the Secretary must ensure that all policies, procedures and regulations developed pursuant to the Order minimize the administrative burden on affected agencies and the procurement process.

These proposed guidelines, which are being published for 30 days' public comment, respond to the requirement in section 4(b) of the Order that the Secretary of Commerce draft rules, regulations, and guidelines necessary to implement the Order within 90 days of the date of the Order. The standards set forth in these proposed guidelines will not, in and of themselves, have force and effect in Federal procurements. Rather, they will serve as the basis for a proposed revision to the Federal Acquisition Regulation (''FAR'') pursuant to the policies and procedures set forth in FAR Subpart 1.5., 48 CFR Subpart 1.5. That proposed revision will be published for public comment, pursuant to 48 CFR 1.501–2.

It has been determined that these proposed guidelines are significant for purposes of Executive Order 12866. Because these proposed guidelines relate to a matter of public property, loans, grants, benefits, or contracts, they are exempted from all the procedural requirements of the Administrative Procedure Act (5 U.S.C. 553). Because notice and comment are not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and was not done for purposes of the Regulatory Flexibility Act. The guidelines do not contain information collection requirements for purposes of the Paperwork Reduction Act.

Guidelines for Empowerment Contracting

I. Definitions

''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

''Area of general economic distress'' means, for all urban and rural communities, any census tract that has a poverty rate of at least 20 percent or any designated Federal Empowerment Zone, Supplemental Empowerment Zone, Enhanced Enterprise Community, or Enterprise Community. ''Area of general distress'' also means any rural or Indian reservation area that currently meets the criteria for designation as a redevelopment area under § 401(a) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161(a)), as set forth at 15 CFR 301.2 (loss of population); 15 CFR 301.4 (Indian Lands) and 15 CFR 301.7 (special impact areas).

The Department of Commerce shall develop and maintain the official listing of eligible areas, based on the 1990 decennial Census of Population data. The listing shall contain the Census tract and block numbering for all eligible areas.

''Qualified large business'' means a large for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; and (2) either has a significant physical presence in the area of general economic distress or has a direct impact on generating significant economic activity in the area of general economic distress.

''Qualified small business'' means a small for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; (2) has a significant physical presence in the area of general economic distress; or (3) has a direct impact on generating significant economic activity in the area of general economic distress.

''Eligible businesses'':

(1) ''Business'' means the legal entity responsible for performance of the contract for which a preference is sought.

(2) ''Small business'' is defined by the definitions and procedures set forth by the Small Business Administration for determining size eligibility for government procurements (13 CFR 121.901–911).

(3) ''Large business'' means any business that is not a small business.

(4) ''Not-for-profit businesses''—Notwithstanding 13 CFR 121.403 (the SBA regulations that defines ''business or concern'' to mean for-profit entities), size determinations for not-for-profit entities will follow the same procedures as those of for-profit entities, *i.e.*, the Standard Industrial Code (SIC) of the procurement will govern.

(5) ''Employs a significant number of residents from the area.'' This means a business allocates or will (based on a showing made at the time of certification of eligibility for a preference) allocate at least 15 to 25 percent of its total labor costs associated with performing the contract in wages to residents from the area of general economic distress;

(6) ''Has a significant physical presence in the area.'' This means a business with physical plant(s) in eligible areas which comprises at least 25 percent of the total area of the physical plant(s) of the business;

(7) ''Has a direct impact on generating significant economic activity in the area.'' This means a business which: (1) allocates or will (based on a showing made at the time of certification of eligibility for a preference) allocate at least 40 to 50 percent of its total labor costs associated with performing the contract in wages to residents from the area of economic distress; or (2) during the six months prior to submitting its bid or proposal, has incurred at least 15 percent of its expenses on goods, materials, and services from firms located in eligible areas; or (3) is owned [1] by permanent resident(s) of the area of economic distress who lives full time in the area of economic distress.

II. Challenges

Businesses shall ''certify'' their qualifications pursuant to the definitions set forth in the ''Definitions'' section of these guidelines. The Commerce Department may develop a system for verifying key information, and criminal sanctions shall apply for false applications. Challenges regarding certification as to size will continue to be handled under SBA's Procedures for Size Protests and Appeals (13 CFR 121.1601–121.1722). Challenges to certifications regarding other elements required for qualification shall be heard by the Commerce Department under procedures to be developed.

III. Applicability

Subject to the provisions contained in the ''Phased Implementation of the Program'' section of these proposed guidelines, these of the Program'' section of these proposed guidelines, these proposed guidelines shall apply to unrestricted competitions for contracts exceeding $100,000.

IV. Incentive Structure

Both price and non-price incentives shall be available in contracts subject to these proposed guidelines. While applying these incentives, the Contracting Officer will be authorized to determine the size and type of incentive to apply to any particular procurement. Preferences in the form of incentives shall represent a price preference of 5 to 10 percent or an evaluation credit 5 to 10 percent.[2] Any preference a business receives under these guidelines shall be added to the preferences it may receive pursuant to other statutory or regulatory programs.

V. Monitoring and Evaluation

Subject to the provisions of the ''Phased Implementation of the Program'' section of these proposed guidelines, the Commerce Department, in conjunction with procuring agencies, shall monitor the process as follows:

(1) *Monitoring the Federal Procurement Process.* We would expect that the benefit to the federal procurement system would begin to be realized during the latter years of phase two of the program. To assist in monitoring and evaluating the efficiency of this new program, agencies awarding contracts to qualified businesses shall provide the following information to the Department of Commerce:

(A) The startup costs and ongoing administrative costs of implementing the program;

(B) The extent to which incentives were used in evaluating awards under this program;

(C) The extent to which incentives changed the outcome of the procurement;

(D) The advantages and disadvantages to the agency of awarding contracts with these preferences; and

(E) The savings and/or quality improvements in supplies or services bought under contracts subject to the program (or increased costs and/or decreased quality of such supplies or services).

(2) *Monitoring the Impact on Business Development.* Evaluation criteria shall be established on national goals and objectives. A sample of businesses receiving contracts under the program would be examined with the following issues being addressed:

(A) Did the business locate or remain in a particular place so that it would be eligible for preferences under these guidelines;

(B) Did the business hire new workers or provide additional benefits to existing workers from eligible areas so that it would be eligible for preferences under these guidelines;

(C) Did the business purchase additional goods and services from firms located in eligible areas so that it would be eligible for preferences under these guidelines;

(D) Did the business propose to hire more workers in eligible areas as a result of bidding or proposing under the subject contract;

(E) Is this contract new work that the business would not have received but for this program.

(3) *Monitoring the Impact on Distressed Communities.* In order to examine impacts of the program on distressed communities, outcomes should be measured in the context of local conditions and community priorities, as well as broad national goals. The local vision for a community's transformation should provide the principal criteria for measuring local outcomes. The monitoring and evaluation process should have both an initial and a longer term phase. The principal objectives of the initial phase would be to:

(A) Establish baseline measurements of demographics, economic indicators, physical infrastructure conditions and needs, and social conditions;

(B) Identify local outcome measures and common national measures toward which long-term evaluation will be directed, including employment, crime, education, and poverty; and

(C) Develop a strategy and mechanism for evaluating progress toward local and national goals over time.

The longer-term evaluation should have the capacity to answer

[1] For these purposes, an individual ''owns'' a business if he or she has a 50 percent or greater financial interest in such business.

[2] If, for example, a price preference were used in an IFB or an RFP, a qualifying firm's offered price would be reduced by 5% to 10%. If an evaluation preference were used in an RFP, an offeror that received a preference would have its overall non-price related evaluation increased by 5% to 10% above the score it would have otherwise received.

fundamental questions about the efficacy of targeted Federal contracting, specifically its ability to revitalize distressed communities and to improve the social and economic well-being of residents. This phase will examine such questions as:

(A) To what extent does the program create or improve the quality of jobs and economic opportunities in the distressed area?

(B) To what extent does the program result in new businesses locating in the community or increased rates of business retention in the community?

(C) To what extent does the program affect areas outside the distressed community by either connecting residents with opportunities in the larger community or by increasing growth in the larger area?

(D) How have the changes in these communities affected the jurisdictions in which they are located?

(E) How have areas (and residents) adjacent to the distressed communities been affected?

(F) At what cost have these outcomes been achieved? The evaluation must ultimately provide an empirical basis for assessing program costs relative to benefits.

(G) How effectively does the program interact with other government programs designed to promote the development of economically distressed communities?

In monitoring the program, the Department of Commerce can request additional information to the extent that it deems appropriate.

VI. Phased Implementation of the Program

(1) *First phase—six month testing period.* These guidelines will apply initially, during a first phase of six months' duration, only to a limited number of contracts involving industries whose two digit Standard Industrial Classification (or ''SIC'') Codes will be listed in the revision to the FAR based upon these guidelines (see SUPPLEMENTARY INFORMATION). The contracts to be selected shall be developed with the concurrence of the Department of Commerce and the procuring agency in question. We seek public comment on the industries to be listed. During the first phase, the efficacy of alternative forms of preferences in different industry settings will be tested and assessed.

(2) *Second phase—further implementation.* Further implementation of the Order will be instituted in the second phase of the program, which will begin after the first phase of the program has ended. In the second phase, the program will be applied to a larger number of contracts within selected two digit SIC Code industries involved in competitive Federal procurements, consistent with efficient administration of the program. Industries included in the second phase will be identified in advance of being included. The contracts to be selected shall be developed with the concurrence of the Department of Commerce and the procuring agency in question. The efficacy of the program will be monitored and evaluated during the second phase, subject to the criteria set forth in the ''Monitoring and Evaluation'' section of these guidelines. At the end of this five or so year period, we would ascertain whether the program is meeting its goals. Specifically, we would determine whether the program (a) stimulated economic activity (through, among other things, job creation or new investment) in areas of general economic distress and (b) benefited the federal procurement system. If the program meets these objectives, it would be expanded to other selected industries for similar implementation and evaluation.

VII. Effective Date

The standards set forth in these guidelines will serve as the basis for a proposed revision to the Federal Acquisition Regulation pursuant to the policies and procedures set forth in FAR Subpart 1.5. The proposed FAR revision will be published for public comment, pursuant to 48 CFR 1.501–2.

Dated: September 10, 1996.

Michael Kantor,

Secretary of Commerce.

[FR Doc. 96–23591 Filed 9–12–96; 8:45 am]

BILLING CODE 3510–17–M

International Trade Administration

[A–421–803]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 12, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. The review covers one exporter of the subject merchandise to the United States, Hoogovens Groep BV (Hoogovens) and the period August 18, 1993, through July 31, 1994. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 12, 1995, the Department published in the Federal Register (60 FR 35893) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, August 19, 1993). On February 6, 1996, and on August 7, 1996, the Department sent Hoogovens supplemental questionnaires on the subject of reimbursement of antidumping duties. We gave interested parties an opportunity to comment on our preliminary results and the supplemental questionnaires. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

Scope of This Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice

the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers sales of cold-rolled carbon steel flat products from the Netherlands by Hoogovens Groep BV. The review period is August 18, 1993, through July 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We also gave them an opportunity to comment on the issue of potential reimbursement of antidumping duties to be assessed. We received comments and rebuttal comments from Hoogovens Groep BV, an exporter of the subject merchandise, (respondent), and from Bethlehem Steel Corporation, U.S. Steel Group a Unit of USX Corporation, Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, AK Steel Corporation, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and WCI Steel Inc., petitioners.

Comment 1: The respondent argues that the Department should have exercised its discretion not to require Hoogovens to report a very small quantity of U.S. sales of secondary merchandise by a U.S. affiliate, Precision Slitting, Inc. (PSI), which were its only sales of ''seconds'' in the United States. While acknowledging that the Department considers the antidumping law to require the inclusion of all U.S. sales during the period of review (POR) in the calculation of margins, it cites *American Permac, Inc. v. United States,* 783 F. Supp. 1421, 1423–24 (CIT 1992), in support of its contention that sales of seconds should be excluded from the calculation of dumping margins when they are *de minimus* and distortive of the margins.

Petitioners respond that the Department's practice of including all U.S. sales was held to be reasonable in *NSK Ltd.* v. *United States,* 896 F. Supp. 1263, 1267–68 (CIT 1995).

Department's Position: It is normal Department practice to consider all of a company's U.S. sales in an administrative review, including those that were excluded due to time and resource constraints in the original investigation. *American Permac,* upon which Hoogovens relies, states that, while U.S. sales outside the ordinary course of trade normally should be included in the sales database, ''a methodology is to be applied which accounts for sales which are unrepresentative and which do not lead to a fair price comparison.'' 16 CIT 41, 42 (1992). The *American Permac* court then upheld the Department's inclusion of a small number of sales alleged by the plaintiff in that case to be distortive, noting that it was not clear from the record that any distortion actually occurred in that case. *Id.* at 43–44. Thus, *American Permac* stands for the proposition that U.S. sales in small quantities will be included *unless* they are shown to be distortive.

Commerce has met the standards set forth in *American Permac* by providing for a methodology which accounts for the allegedly unrepresentative sales involving secondary merchandise and leads to a fair comparison. As explained in the memorandum of April 19, 1995, from Roland L. MacDonald to Joseph A. Spetrini entitled *Treatment of Non-Prime Merchandise for the First Administrative Review of Certain Carbon Steel Flat Products* (''Non-Prime Memorandum''), which is part of the General Issues record for all of the Carbon Steel first reviews, the Department made every effort to avoid distortion by developing methodologies to distinguish secondary merchandise in these reviews from prime merchandise. Where the respondent combined prime and secondary merchandise within a single product grouping, Commerce separated them for the purpose of developing the model match concordance. Similarly, secondary merchandise was segregated from prime merchandise for purposes of conducting the arm's length test, the cost test, and the margin calculation. In those cases in which a U.S. sale of secondary merchandise could not be matched to a contemporaneous home market sale of secondary merchandise, Commerce compared the U.S. sale with constructed value (CV), using the approach upheld in *IPSCO, Inc. v. United States,* 965 F.2d 1056, 1060 (Fed. Cir. 1992). Specifically, because Hoogovens expended the same materials, capital, labor and overhead for prime merchandise and secondary merchandise, the CV of prime and secondary merchandise is identical. *IPSCO,* 965 F.2d at 1058, 1060–61.

Finally, Hoogovens own characterization of these sales as ''insignificant'' suggests that they could not significantly distort the overall, weight-averaged, margin. Because Hoogovens has not shown that, despite these measures, the relevant PSI sales are distortive, Commerce has not excluded them from the U.S. sales database. *See also* Comment 2.

Comment 2: Respondent contends that the Department's use of CV to calculate foreign market value (FMV) for matches to U.S. sales of seconds is internally inconsistent with its policy enunciated in its Non-Prime Memorandum that ''the Department should consider, and compensate for, the potentially distortive effects of including seconds in our antidumping duty calculations.'' Respondent urges the Department either to use Hoogovens' reported CV for seconds (which was based on standard costs multiplied by the ratio of the sales value of seconds to the sales value of prime merchandise), or to exclude from the margin calculation those secondary sales for which there are no contemporaneous home market matching sales, or to calculate FMV based on the weight-averaged price of home market seconds for the entire POR.

Repondent argues that the Department's methodology is not ''compelled'' by the Court of Appeals decision in *IPSCO,* which affirmed the Department's decision to allocate production costs equally between the prime product and a co-product in calculating CV for the co-product.

Respondent contends that seconds are by-products, and absent any instructions from the court on how to calculate costs for by-products, the Department must accept the costing of these products according to GAAP. Hoogovens contends that it treats secondary merchandise as a by-product in its accounting system.

Petitioners respond that Hoogovens' argument that seconds are a by-product is unsupported by evidence in the record. Moreover, this claim is contradicted by other evidence in the record. In the calculation of CV, Hoogovens used the income from the sale of by-products as an offset against the total costs of production, but used a different methodology for costing seconds. Hoogovens' calculation of standard costs for seconds is known as the ''sales value at split-off method,'' and is generally used to cost co-products, not by-products. Petitioners claim that PSI's sales of seconds are treated as sales of co-products, and that therefore they should be costed in the same way as prime products, like the secondary products at issue in *IPSCO*. Further, the petitioners argue, the suggestion that including these sales distorts the calculated margins has no basis. To the extent that there is any potential for distortion, they argue, the Department has adopted a methodology which compensates for such distortion by comparing U.S. sales of seconds to sales of seconds in the home market, or when there are no contemporaneous home market sales, to the constructed value (CV).

Department's Position: We disagree with the respondent. The Department continues to follow *IPSCO* in its practice. Respondent's argument that seconds are a by-product is unsupported by the record. In the response to Section VI of the Department's questionnaire (November 14, 1994), Hoogovens described its by-products accounting as follows (Exhibit VI–2, p. 6): ''The cost of the by-products like cookery [*sic*] by-products, slag, gas, etc. are part of the departmental budget for raw materials cost of the iron and steel production. These by-products are sold to third parties or transferred internally at market value.'' This reference to by-products of the coke ovens is the sole reference to by-products in the response. Nowhere does Hoogoven indicate that any by-products are generated in the steel rolling mills. To the contrary, Hoogovens describes the ''seconds'' as ''prime quality steel that had been declassified at RBC as a result of damage during transatlantic shipment or during processing at RBC. Hoogovens does not actively market secondary quality subject merchandise in the United States, and exported no such material during the POR.'' (Letter to the Department dated October 5, 1994, p. 2.) Thus, the merchandise Hoogovens exported to the United States and sold as seconds was originally of prime quality and incurred the same costs as merchandise ultimately sold as prime quality.

Comment 3: Respondent argues that the Department should return to the methodology used in the investigation to make the adjustment for value added taxes (VAT), which was the methodology enunciated in *Grey Portland Cement and Clinker from Mexico*, 58 FR 25803 (April 28, 1993), to achieve tax neutrality. Although the Court of International Trade (CIT) rejected this methodology in *Federal Mogul Corp.* v, *United States*, 834 F. Supp. 1391 (CIT 1993), the Court of Appeals reversed this decision on August 28, 1995 (*Federal Mogul Corp.* v, *United States*, 94–1097, –1104). Hoogovens claims that the Department's current methodology inflates dumping margins over those that would be calculated in the absence of a tax adjustment.

Alternatively, respondent argues that if the Department continues to use its current methodology, it should apply the VAT only to gross prices, because under Dutch law the proper tax basis is gross sales price (the first level). Respondent contends the Department has no authority to calculate the tax adjustment to USP on the basis of a unit price net of all adjustments (the second level).

Petitioners comment that Hoogovens has misread the Court of Appeal's decision in *Daewoo Electronics* v. *United States*, 6 F.3d 1511, 1519–20 (Fed. Cir. 1993), in which the court ruled that in making the tax adjustment under 19 USC § 1677a(d)(1)(C), the Department must apply the tax rate to USP using a tax basis that is at an ''analogous point'' in the stream of commerce as the tax basis for the home market tax. *Daewoo* says nothing about the second level adjustment. Petitioners argue that the Department's methodology fully complies with the analogous point requirement: in both the home market and the U.S. market, the basis for the Department's tax adjustment calculations was the gross invoice price to the first unrelated customer. The Department makes the second level adjustment in order to eliminate distortion arising from different circumstances of sale in the home and U.S. markets, such as differences in freight, physical characteristics of the merchandise, or selling expenses. The CIT expressly recognized that such an adjustment is appropriate in *Daewoo Electronics Co. Ltd.* v. *United States*, 760 F.Supp. 200, 208 (Ct. Int'l Tr. 1991). Petitioners characterize as baseless Hoogovens' argument that this holding was rendered moot by the subsequent decision of the Court of Appeals in that case that the delivered price, not the ex-factory price, was the point at which taxes are incurred under Korean tax law. The CIT's holding regarding the second level adjustment becomes even more important when items such as freight charges (which are included in the delivered prices) are part of the tax basis.

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department changed its treatment of home market consumption taxes for this review. Where merchandise exported to the United States was exempt from the consumption tax, the Department added to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with

instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Comment 4: Respondents comment that the Department's computer program incorrectly weight-averaged equally similar matches, because of the absence of an output statement, and failed to weight-average the differences in merchandise (''difmers'') of the equally similar home market sales.

Department's Position: We agree, and have made the appropriate corrections to the program for the final results.

Comment 5: Respondent and petitioners comment that the Department used Hoogovens' reported interest rate on short-term borrowings, instead of the interest expense factor for purposes of determining cost of production and allocating profit on further manufactured sales.

Department's Position: We agree, and have used the interest expense factor for ESP sales in our final margin calculations. This was not an issue for purchase price sales, as all of these sales had home market matches and CV was not used.

Comment 6: Respondent comments that the Department erred in not converting packing costs incurred in the Netherlands for U.S. sales from guilders to dollars in calculating foreign market value. Because of a typographical error, the format sheets supplied with Hoogovens' January 13, 1995, response incorrectly stated that these expenses were reported in U.S. dollars.

Department's Position: We agree and have corrected this error in our final margin calculation.

Comment 7: Respondent comments that in adding missing further manufacturing cost data for two control numbers, the Department erred in adding these costs to sales with process code ''40,'' which are ''as is'' sales of seconds.

Department's Position: After the preliminary results, the Department found that some sales of seconds were erroneously coded as prime merchandise, which caused the computer program to identify the further manufacturing cost data for those sales as missing. For the final results, we have corrected the coding and used the respondent's reported cost data for the sales in question.

Comment 8: Respondent comments that in the first model comparison, the Department set the variable costs of home market sales of seconds equal to the variable costs of home market sales of prime merchandise for the same control number, but failed to make this change in the second model comparison.

Department's Position: We agree with respondent and have corrected the program.

Comment 9: Respondent notes that for some of PSI's sales of seconds corresponding to six control numbers, the Department used Hoogovens' reported variable costs for seconds to compare with the (corrected) prime variable costs of home market sales of seconds. Hoogovens proposed adding new programming language to the model match and section 2 of the margin calculation programs.

Department's Position: We agree with respondent. This error occurred because Hoogovens incorrectly coded certain U.S. sales of seconds as prime sales. We have made the suggested corrections in the programs for our final results.

Comment 10: Petitioners argue that Hoogovens' claimed adjustments for home market rebates should be denied, because they include amounts paid on out-of-scope merchandise and are allocated on a per ton, rather than an *ad valorem* basis. In addition, for some of the sales, Hoogovens included post-sale price adjustments in the same field as rebates.

Respondent replies that since rebates were paid at the same rate for both scope and non-scope merchandise, there is no possibility that the reported amounts were skewed by the rebates paid on non-scope merchandise. The CIT has consistently recognized, even in the *Torrington* case cited by the petitioners (*Torrington* v. *United States,* 881 F. Supp. 622 [CIT 1995]), that respondents may apportion rebates that are paid at the same percentage rate on both scope and non-scope merchandise. (*Torrington,* 881 F. Supp. at 640, citing *Smith-Corona Group* v. *United States,* 713 F.2d 1568, 1580 [Fed. Cir. 1983].) Hoogovens' reported rebates were ''calculated directly from actual sales figures and from the total amount of rebate paid,'' as required by the Court of Appeals in *Smith-Corona.* Hoogovens also notes that it granted rebates on both scope and non-scope merchandise to only one customer. Further, Hoogovens reported its rebates on a per ton basis, because this is the basis on which they are recorded in Hoogovens' financial records. The Department should therefore continue to use the reported rebates in the final results. Finally, respondent argues that inclusion of post-sale price adjustments in the rebate field for five home market invoices does not affect the calculation of margins where the Department has fully verified that all the components of the amounts reported in the field are accurate. Where the respondent has reported these expenses in the manner in which they are recorded in his accounting system, and the Department has verified the accuracy of these adjustments, there is no reason why they should not be accepted by the Department.

Department's Position: We agree with respondent. We verified that Hoogovens apportioned rebates on scope and non-scope merchandise at the same percentage rate. During verification, we also examined the allocation of rebates for scope and non-scope merchandise. We verified that the customers met their required sales target and traced the rebate payment through supporting documents. We saw no indication that Hoogovens ties the rebate to the invoice in their ledger system, or that the allocation method distorted the amounts reported. Hoogovens usually reported home market post-sale price adjustments in the ''OTHDIS1H'' field. However, for five home market sales, there was both a post-sale price adjustment and a rebate combined and reported in the ''REBATE1H'' field. In the January 13, 1995, response (Exhibit 23), Hoogovens broke out the post-sale price adjustments and rebates for each of the sales. We verified the rebate given in the course of the sales traces, and traced the post-sale price adjustments to

the sales journal and supporting documentation.

Comment 11: Petitioners argue that Hoogovens inappropriately used different averaging periods when calculating the interest for home market and U.S. purchase price sales. These rates were used to calculate inventory carrying charges and credit expenses. Petitioners urge the Department to use the same averaging period for both home market and U.S. sales, or to calculate separate home market interest rates for the non-overlapping periods.

Respondent replies that the Department specifically instructed Hoogovens to calculate its interest rates based on the time period for which sales were reported in each market, and that the Department fully verified the reported interest rates.

Department's Position: We agree with respondent. As instructed by the Department, Hoogovens used the average interest rate for each sales reporting period in each market. It is appropriate to utilize the average interest rate applicable to sales in each of the reporting periods. This more accurately reflects the borrowing experience of the respondent for the respective sales reporting periods.

Comment 12: Petitioners argue that in calculating the dumping margin, the Department should deduct from United States Price (USP) the actual dumping duties to be paid by NVW (U.S.A.) Inc. (''NVW''), *i.e.*, the Department should treat antidumping duties as a cost. Petitioners interpret 19 U.S.C. § 1677a(d) as including antidumping and countervailing duties in the phrase ''import duties,'' which are deducted from purchase price and exporter's sales price. The Department's margin program calculates the difference between foreign market value and USP on each sale. ''This difference is essentially equal to the antidumping duties to be paid by NVW and referred to in § 1677a(d)(2)(A).'' Petitioners urge the Department to modify its program so that once this difference is calculated, it is deducted from USP before the final margin is determined.

Respondent replies that petitioners' proposal has been repeatedly rejected by the Department, the courts and the U.S. Congress, and that the petitioners cite no authorities in support of their interpretation of the statute. The effect of their proposal would be to inflate Hoogovens' margins geometrically. In effect, the margin would be doubled on each transaction. This inflated rate, they argue, would then become the basis for the deduction from USP in the succeeding administrative review, and would again be doubled. Moreover, Hoogovens actually paid only estimated duty deposits upon entry of the merchandise, rather than the final duties to be calculated in this review. These entries have not been liquidated; hence there are no antidumping duties actually paid that the Department could deduct from USP, even if such action were legally appropriate. In *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856 (CIT 1993), the CIT agreed with the Department's consistent practice of refusing to consider the amount of estimated antidumping duties based upon past margins in its calculation of current margins.

Department's Position: It is the Department's longstanding position that antidumping and countervailing duties are not a cost within the meaning of 19 U.S.C. § 1677a(d). Antidumping and countervailing duties are unique. Unlike normal duties, which are an assessment against value, antidumping and countervailing duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and countervailing duties cannot be part of the very calculation from which they are derived. This logical rationale for the Department's interpretation of the statute is consistent with prior decisions of the Court of International Trade. See *Federal-Mogul* v. *United States,* 813 F. Supp. 856, 872 (1993) (deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of ''normal import duties'').

In contrast, Petitioners' reasoning is circular rather than logical: in calculating the dumping margin the Department must take into account the dumping margin. Such double counting, *i.e.*, including the same unfair trade practice twice in a single calculation, is unjustifiable, except in the limited circumstances provided for in section 353.26.

Moreover, the treatment of antidumping and countervailing duties (already paid or to be assessed) as a cost to be deducted from the export price is an issue that was arduously debated during passage of the Uruguay Round Agreements Act (URAA) and ultimately rejected by Congress. *See,* H.R. 2528, 103rd Cong., 1st Sess. (1993). Alternatively, Congress directed the Department to investigate, in certain circumstances, whether antidumping duties were being absorbed by affiliated U.S. importers. 19 U.S.C. § 1675(a)(4). Thus, Congress put to rest the issue of antidumping and countervailing duties as a cost. URAA Statement of Administrative Action at 885 (''The duty absorption inquiry would not affect the calculation of margins in administrative reviews. This new provision of the law is not intended to provide for the treatment of antidumping duties as a cost.''); *see also* H. Rep. No. 103–826(I), 103rd Cong., 2nd Sess. (1994) at 60.

Comment 13: Petitioners argue that Hoogovens should have reported direct selling expenses for NVW, and urge the Department to apply the best information available (''BIA'') by making the adverse assumption that all of NVW's expenses were direct expenses.

Respondent replies that NVW ''serves only as a facilitator, communication link and processor of documents for its U.S. imports and sales.'' In this capacity, NVW processes sales of both subject and non-subject merchandise. NVW's expenses consist primarily of rent for office space and the salaries of its officers. The Department always treats these types of expenses as indirect selling expenses. Hoogovens reported all of NVW's expenses in its calculation of U.S. indirect selling expenses, and these expenses were verified by the Department.

Department's Position: We agree with respondent. Petitioners misquoted Hoogovens' response of October 6, 1994, when they claimed that Hoogovens characterized NVW as its ''selling agent'' in the United States. Hoogovens' response made clear that its U.S. sales are negotiated by its sales office in IJmuiden, the Netherlands and not by NVW in the United States.

Comment 14: Petitioners argue that Hoogovens miscalculated its inventory carrying costs (''ICC'') for its ESP sales, contending that the amounts reported in the INVCARU field are substantially lower than should result from Hoogovens' methodology, and that this methodology is flawed. Petitioners object to Hoogovens' use of the transfer price, rather than the cost of production (''COP'') in the calculation, citing Hoogovens' statement that ''the inventory cost must be based on the cost of producing the steel, not the price for which it is sold.'' (§§ III–V Supplemental Response at 35). Although the Department's practice has been to use the cost of manufacture (COM) in the calculation, petitioners further argue that COP better measures the true opportunity cost to Hoogovens, because it includes COM and additional general, administrative and interest expenses. Second, petitioners argue, the transfer price is not on the same basis as the total cost of goods sold and should not be reduced by the ratio of the total cost to total sales. Third, petitioners argue that the home market interest rate should be used in the ESP

ICC calculation. Petitioners urge the Department to recalculate INVCARU for the ESP sales using the following formula:

ESP ICC = COP x HM Int. Rate x Inv. Days/365

Respondent replies that the methodology it used is reasonable and has been verified by the Department. Moreover, the alternative methodology the petitioners propose is almost identical to Hoogovens' methodology, and would change the calculated margins by an infinitesmal amount. Furthermore, Hoogovens' reported ICC is, in fact, cost-based. Although Hoogovens multiplies the ICC factor by the transfer price, it then multiplies the factor by the ratio of Hoogovens' average cost of production to average sales price. This results in an ICC amount that is, in effect, based on the COP. It would be inappropriate to use gross unit price, instead of the transfer price, in the equation, because the gross unit price reported for ESP sales is the price charged by Hoogovens' affiliates to the first unrelated customer. However, the ICC in question is the cost of carrying inventory from the time of production in the Netherlands to the time of delivery to Hoogovens' U.S. affiliates. In calculating the inventory cost for time in the Netherlands and time on the water, Hoogovens used the transfer price and a cost/sales ratio based on Hoogovens' own sales revenues. Thus, the price and the cost/sales ratio used in the calculation of ICC were calculated on the same basis. In regard to the interest rate, Hoogovens submits that U.S. ICC expenses should be calculated based on the costs of carrying inventory for the period for which Hoogovens reported its U.S. sales. Accordingly, the Department should not adjust Hoogovens' reported data.

Department's Position: Petitioners' argument is based on the erroneous conclusion that Hoogoven's ICC reporting was not cost-based. Respondent's methodology of multiplying the ICC factor by the ratio of average cost of production to average sales price results in an ICC based on cost of production. Therefore, we have accepted Hoogoven's ICC calculation methodology. However, the ICC reported in the INVCARU field is incorrect for a different reason. Prior to verification, respondent reported to the Department certain corrections to its previous submissions, including corrections of the short-term interest rates on its borrowings in both the home and U.S. markets. (Letter to the Department dated March 15, 1995, Exhibit 5.) On March 31, 1995, at the Department's request, Hoogovens submitted revised computer files containing corrections to certain errors identified prior to verification. These files purportedly included revised ICC to reflect the corrected short-term borrowing rates. However, this correction to ICC was not made for U.S. sales owing to a programming error. For the final results, the Department has modified its margin calculation program to correct this error.

Comment 15: Petitioners argue that the Department improperly excluded three zero-priced U.S. ''sample sales'' by Hoogovens' U.S. affiliate, although it is its practice in administrative reviews not to exclude sample sales, unless the respondent can demonstrate either that (a) no transfer of ownership occurred between the exporter and unrelated U.S. purchaser, or (b) that the product was not used for commercial consumption. Hoogovens has not so claimed for any of these sales, and therefore the Department should include them in its margin calculation.

Hoogovens contends that these sales of ''small, throw-away pieces of damaged steel'' cannot reasonably be described as ''samples,'' and that it would be unfair to require Hoogovens to pay antidumping duties on a tiny quantity of damaged steel of no commercial value. Further, Hoogovens argues that no case has been made that exclusion of these sales would prejudice the petitioners' interests.

Department's Position: We agree with petitioners. In general, the Department does not exclude any U.S. sales from its calculation of USP. The Department has considered all transactions to be sales whenever ownership transfers to an unrelated party. However, the Department has in the past determined that, in appropriate circumstances, free-of-charge samples are not ''sales'' within the meaning of section 772 of the antidumping law. The CIT has recognized that the Department must make its determinations regarding sample sales by examining the relevant facts of each individual case and that the burden of proof in demonstrating that such sales are outside the ordinary course of trade lies with the respondent. Hoogovens did not claim or offer evidence that these sales were outside the ordinary course of trade. Consequently, the Department has no basis for excluding them from the margin calculation. See *Granular Polytetrafluoroethylene Resin from Japan: Final Results of Antidumping Duty Administrative Review,* 58 FR 50343 (September 27, 1993); *The Timken Company* v. *United States,* 862 F. Supp. 413, 417 (CIT 1994).

Comment 16: Petitioners comment that the Department mistakenly added two incorrect program lines to its margin calculation program for further manufacturing sales which had the effect of allocating U.S. direct and indirect selling expenses on the basis of the ratio of foreign manufacturing to total manufacturing.

Department's Position: We agree with petitioners and have removed these lines from the program.

Comment 17: Petitioners argue that Hoogovens' response to the February 6, 1996, supplemental questionnaire demonstrates that Hoogovens is reimbursing NVW for payment of antidumping duties. Hoogovens responds that the issue cannot arise until final antidumping duties are assessed following completion of the administrative review. Hoogovens also argues that because NVW is not an unaffiliated U.S. customer, and makes no sales to such customers, transactions associated with NVW's ''routine selling functions'' on behalf of its foreign parent cannot ''implicate the remedial purposes of the reimbursement regulation.''

Department's Position: Section 353.26 of the antidumping regulations requires the Department to deduct from the United States price the amount of any antidumping duty that a producer or reseller either pays directly on behalf of the importer or reimburses to the importer. The Department has interpreted this regulation as applying where the importer is an affiliated party (CEP situations) as well as when the importer is unaffiliated. See *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 61 Fed. Reg. 4408, 4410–11 (Feb. 6, 1996). That interpretation is consistent with both the plain language of the regulations and the regulatory history. *See, e.g.,* 19 CFR 353.41 (defining United States price as the purchase price or the exporter's sales price).

Furthermore, contrary to Hoogovens' argument, the reimbursement regulation can apply in the first review even though duties have not yet been assessed. An agreement to reimburse is sufficient to trigger the regulation. This is evident from the required reimbursement certification, which must state that ''I have not entered into any agreement or understanding for the payment or refunding to me. . .of all or any part of the antidumping duties assessed. . . .'' 19 CFR § 353.26(b). The reimbursement adjustment is made not on the basis of cash deposits, but rather on the basis of the actual amounts to be assessed. This procedure was noted

with approval by the CIT in *PQ Corp.* v. *United States,* 11 CIT 53, 67 (1987). As the opinion notes:

Accordingly, ITA states that its practice regarding reimbursements for antidumping duties is as follows. .... If merchandise is being sold at less than fair value, then the amount of that difference—the dumping margin—will be the basis for an actual assessment of antidumping duties. Only at that point, while the merchandise is still in liquidation, does ITA apply 19 CFR § 353.55 by determining what amount, if any, of the antidumping duties to be assessed are or will be paid. . .[or]. . . refunded to the importer by the manufacturer, producer, seller or exporter. The amount ''paid'' or ''refunded'' is based on the antidumping duties *to be assessed,* not on the prior deposit of estimated antidumping duties. Thus, if a producer agrees to reimburse all antidumping duties, then the entire amount of the antidumping duties to be assessed will be added in determining the dumping margin pursuant to 19 CFR § 353.55, regardless of whether a larger or smaller deposit of estimated antidumping duties has been posted. (Emphasis added).

Thus, if a producer or reseller agrees to reimburse all antidumping duties, then the entire amount of the antidumping duties to be assessed, as reflected in the initial calculation of whether dumping is occurring in that period of review, will be added in determining the dumping margin for final assessment, pursuant to 19 CFR § 353.26. As discussed above, the evidence of record demonstrates that Hoogovens has agreed to reimburse NVW for antidumping duties. Therefore, the regulation applies.

Final Results of Review

As a result of our review, we have determined that the following margin exists:

Manufacturer/ exporter	Time period	Margin (per-cent)
Hoogovens Groep BV	8/18/93–7/31/94	5.54

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value, taking into account reimbursed duties, may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company named above will be 5.54 percent; (2) for all other Netherlands exporters, the cash deposit rate will be the rate established in the less-than-fair-value (LTFV) investigation; and (3) the cash deposit rate for non-Netherlands exporters of the subject merchandise from the Netherlands will be the rate applicable to the Netherlands supplier of that exporter. The revised rate after remand established in the LTFV investigation is 19.32 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: August 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–23526 Filed 9–12–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–005]

High Power Microwave Amplifiers and Components Thereof From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On May 6, 1996, the Department of Commerce (the Department) issued the preliminary results of its 1994–95 administrative review of the antidumping duty order on high power microwave amplifiers and components thereof (HPMAs) from Japan (61 FR 20223; May 6, 1996). The review covers one manufacturer/ exporter. The review period is July 1, 1994, through June 30, 1995. We gave interested parties an opportunity to comment on our preliminary results. No comments were received. Therefore, as we did in the preliminary results, we have based our determination on facts available because the firm failed to submit a response to our questionnaire.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1996, the Department published in the Federal Register the preliminary results of its 1994–1995 administrative review of the antidumping duty order on HPMAs from Japan (61 FR 20223).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Scope of the Review

The products covered by this review are high power microwave amplifiers and components thereof. High power microwave amplifiers are radio-frequency power amplifier assemblies, and components thereof, specifically designed for uplink transmission in C, X, and Ku bands from fixed earth stations to communications satellites and having a power output of one kilowatt or more. High power microwave amplifiers may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally earth stations). This merchandise is currently classifiable under item 8525.10.80 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Final Results of the Review

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. After the expiration of the comment period, we received a letter from NEC, dated 28, 1996, requesting that the Department partially revoke the antidumping duty order with respect to components (TWTs and Klystron tubes). NEC claimed in its letter that the petitioner, MCL Inc., no longer has an interest in the continued application of the antidumping duty order with respect to these components. However, petitioner has not yet submitted an expression of lack of interest. Further, petitioner has advised the Department that if it does so, it would only support a prospective revocation. *See* Memorandum from Kris Campbell to File, August 27, 1996. Therefore, we are proceeding with the final results for this review based on facts available.

As explained in our preliminary determination, because NEC did not respond to our questionnaire, we assigned NEC a rate based on facts available in accordance with section 776 (b) of the Act. Consistent with our preliminary determination, we have assigned a margin of 41.4 percent to NEC for the period July 1, 1994, through June 30, 1995. For further information regarding the determination of this rate, see the preliminary results for the 1994–95 administrative review of the antidumping duty order on HPMAs from Japan (61 FR 20223; May 6, 1996).

The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective for all shipments of HPMAs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be that established above; (2) for manufacturers and exporters not covered in this review, but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rates for all other manufacturers or exporters will be 33.4 percent, as explained in the preliminary results of the administrative review of the antidumping duty order on HPMAs from Japan (61 FR 20223; May 6, 1996).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 3, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–23525 Filed 9–12–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–433–807]

Initiation of Antidumping Duty Investigation: Open-End Spun Rayon Singles Yarn From Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein at (202) 482–0984 or Richard Herring at (202) 482–4149, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

INITIATION OF INVESTIGATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

The Petition

On August 20, 1996, the Department of Commerce (the Department) received a petition, filed in proper form by the Ad-Hoc Committee of Open-End Spun Rayon Yarn Producers (petitioner), a committee composed of four companies that produce open-end spun rayon singles yarn. An amendment to the petition was filed on September 4, 1996.

In accordance with section 732(b) of the Act, petitioner alleges that imports of open-end spun rayon singles yarn from Austria are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

Petitioner is an interested party, as defined under section 771(9)(F) of the Act, and therefore, may file a petition for the imposition of antidumping duties.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that petitions be filed on behalf of the domestic industry. In this regard, section 732(c)(4)(A) of the Act requires that the Department determine, prior to initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets the minimum requirements if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Our review of the production data provided in the petition and other production information obtained by the Department indicates that the petitioners and supporters of the petition account for more than 50 percent of the total production of the domestic like product, thus meeting the standard of section 732(c)(4)(A) of the Act. The Department received no expressions of opposition to the petition from any domestic producers or workers. Accordingly, the Department determines that the petition is supported by the domestic industry.

Scope of the Investigation

The product covered by this investigation is open-end spun singles yarn containing 85 percent or more of

rayon staple fiber. Such yarn is classified under subheading 5510.11.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and for Customs purposes, our written description of the scope of this investigation is dispositive.

Export Price and Normal Value

Petitioner based export price on actual U.S. market invoices from Linz Textile, an Austrian exporter of the subject merchandise. The invoice prices are c.i.f., and thus petitioner made deductions for foreign inland freight, ocean freight, U.S. freight, insurance, import fees, customs duties, and handling charges.

With regard to normal value, petitioner stated that it was unable to obtain Austrian market prices and was unable to obtain conclusive information, such as an invoice, to document third country prices. Consequently, petitioner based normal value on constructed value (CV).

CV includes the cost of manufacturing (COM), interest expense, and profit. Petitioner calculated COM based on data in Linz's 1995 financial statement and on petitioner's knowledge of the costs and inputs applicable to the production of the subject merchandise. Specifically, the cost of materials was based on the average Customs Value of rayon staple fiber shipped from Austria to the United States in 1995, which the petitioner claims is indicative of Austrian prices. Petitioner's knowledge of the fiber-to-yarn yield factor was also used. Labor costs were calculated from a combination of data in Linz's 1995 financial statement and petitioner's knowledge of the production labor hours required to produce one pound of rayon yarn. The overhead costs were calculated from data in Linz's 1995 financial statement. For the interest and profit expense calculations, petitioner relied on data in Linz's 1995 financial statement. Although petitioner did not include an amount for general and administrative expenses in its calculation of CV, we note that the overhead calculation provided by petitioner may include such expenses.

Based on comparisons of export price to normal value, the estimated dumping margins range from 60.10 percent to 65.00 percent.

Fair Value Comparisons

Petitioner has supplied information reasonably available to it in support of its allegation that open-end spun rayon singles yarn from Austria is being, or is likely to be, sold at less than fair value. If it becomes necessary at a later date to consider the petition as a source of facts available under section 776 of the Act, we may further review the margin calculation in the petition.

Initiation of Investigation

We have examined the petition on open-end spun rayon singles yarn from Austria and have found that it meets the requirements of section 732 of the Act: the requirements concerning allegations of material injury or threat of material injury to the domestic producers of a domestic like product by reason of the subject imports allegedly sold at less than fair value; the requirement concerning the provision of information reasonably available to petitioner supporting the allegation; and, the requirement concerning industry support for the petition. Therefore, we are initiating an antidumping duty investigation to determine whether imports of open-end spun rayon singles yarn from Austria are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determination by January 27, 1997.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the Government of Austria. We will attempt to provide a copy of the public version of the petition to each exporter of open-end spun rayon singles yarn named in the petition.

International Trade Commission Notification

We have notified the International Trade Commission (ITC) of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by October 4, 1996, whether there is a reasonable indication that imports of open-end spun rayon singles yarn from Austria are causing material injury, or threaten to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Dated: September 9, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–23527 Filed 9–12–96; 8:45 am]

BILLING CODE 3510–DS–P

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion including: market access problems with India, bribery and corruption, Japan framework agreement, Europe, Russia, and multilateral development banks. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 12991.

DATES: September 19, 1996.

TIME: 9:45 a.m. to 12:30 p.m.

ADDRESSES: Main Commerce Building, Room 5853, 14th Street and Constitution Avenue, N.W., Washington, DC., 20230. This program is physically accessible to people with disabilities. Requests for sign language interpretaion or other auxiliary aids should be directed to Sylvia Lino Prosak, President's Export Council, Room 2015B, Washington, D.C., 20230. (Phone: 202–482–1124) Seating is limited and will be on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: Sylvia Lino Prosak, President's Export Council, Room 2015B, Washington, D.C., 20230 (Phone: 202–482–1124).

Dated: September 9, 1996.

Sylvia Lino Prosak,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 96–23528 Filed 9–12–96; 8:45 am]

BILLING CODE 3510–DR–P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of the Panel Review.

SUMMARY: The Binational Panel has completed its review of the Final Determination in the antidumping duty administrative review made by the International Trade Administration Porcelain-on-Steel Cookware from Mexico, Secretariat File No. USA–95–1904–01.

FOR FURTHER INFORMATION CONTACT:

James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On April 30, 1996 the Binational Panel issued its decision affirming in part and remanding in part the Final Determination in this matter. The Determination Remand was filed by the International Trade Administration on June 14, 1996. No challenge to that Redetermination on Remand was filed under Rule 73 of the *Article 1904 Panel Rules*. Therefore, pursuant to Rule 73(5) the Panel issued an Order on July 19, 1996 affirming the Redetermination on Remand and instructing the Secretariat to issue a Notice of Final Panel Action. The Notice of Final Panel Action was issued on August 2, 1996. No Request for an Extraordinary Challenge was filed within 30 days of the issuance of the Notice of Final Panel Action. Therefore, on the basis of the Panel decision and Rule 80, the Panel Review was completed and the panelists were discharged from their duties effective September 3, 1996.

Dated: September 4, 1996.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 96–23434 Filed 9–12–96; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Advisory Council Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resources Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; Meeting of the Stellwagen Bank National Marine Sanctuary Advisory Council.

SUMMARY: The Advisory Council was established in July 1996 to advise NOAA's Stellwagen Bank National Marine Sanctuary regarding management of the site. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Tuesday, September 24, 1996, from 9:00 a.m. until 2:00 p.m. The meeting will be held at Memorial Hall in Plymouth, Massachusetts.

AGENDA: General issues related to the management of the Stellwagen Bank National Marine Sanctuary are expected to be discussed, including a report from the Sanctuary Manager, a report on educational activities and a report on research activities.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come-first-served basis.

FOR FURTHER INFORMATION CONTACT: Brad Barr, Sanctuary Manager (508) 747–1691.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Dated: August 27, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–22493 Filed 9–12–96; 8:45 am]

BILLING CODE 3510–08–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Procurement of Goods and Services

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the Federal Register of March 15, 1996 (61 FR 10734), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek reinstatement of approval of a collection of information associated with the procurement of goods and services. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of that collection of information without change through August 31, 1999.

The Commission's procurement activities are governed by the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 *et seq.*). That law requires the Commission to procure goods and services under conditions most advantageous to the government, considering cost and other factors. Forms used by the Commission request persons who bid on contracts with the agency to provide information about costs or prices of goods and services to be supplied; specifications of goods and descriptions of services to be delivered; competence of the bidder to provide the goods or services; and other information about the bidder, such as the size of the firm and whether it is minority-owned. The Commission uses the information provided by bidders to determine the reasonableness of prices and costs and the responsiveness of potential contractors to undertake the work involved.

Additional Information About the Request for Reinstatement of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Information Collection Associated with Procurement of Goods and Services.

Type of request: Reinstatement of approval without change.

General description of respondents: Persons and firms providing bids, proposals, and quotations to the Commission for goods and services.

Estimated number of respondents: 2,500.

Estimated average number of hours per respondent: 2.4 per year.

Estimated number of hours for all respondents: 6,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be sent within 30 days of publication of this notice to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of information collection requirements and supporting documentation are available from Carl Blechschmidt, Acting Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–23414 Filed 9–12–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Savannah River Operations Office; Interim Management of Nuclear Materials at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Supplemental record of decision.

SUMMARY: The U.S. Department of Energy (DOE) prepared a final environmental impact statement (EIS), ''Interim Management of Nuclear Materials'' (DOE/EIS–0220, October 20, 1995), to assess the potential environmental impacts of actions necessary to manage nuclear materials

at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their ultimate disposition are made and implemented. Some of the particular materials considered in the EIS could present environment, safety and health vulnerabilities in their current storage condition.

On December 12, 1995, DOE issued a Record of Decision (ROD) and Notice of Preferred Alternatives (60 FR 65300) on the interim management of several categories of nuclear materials at the SRS, including a narrowing of alternatives under consideration for the stabilization of plutonium-239 and neptunium-237 solutions in H-Canyon, and obsolete neptunium targets in K-Reactor.

On February 8, 1996, DOE issued a Supplemental ROD (61 FR 6633) for the stabilization of Mark-16 and Mark-22 fuels, and other aluminum-clad targets. DOE also indicated that it was considering a DOE staff operations study, Facility Utilization Strategy for the Savannah River Site Chemical Separation Facilities (December 1995) before making a decision on the stabilization of the remaining two categories of nuclear materials at the SRS evaluated in the Interim Management of Nuclear Materials EIS—plutonium-239 solutions, and neptunium-237 solution and obsolete targets.

After further consideration of the facility utilization strategy study, the Final EIS, budget and schedule projections, and comments from interested parties, DOE is now issuing the following decision concerning these materials:

Neptunium-237 Solution and Targets

DOE has decided to dissolve, chemically separate and process in F-Canyon the neptunium-237 contained in nine (9) obsolete reactor targets and the existing neptunium-237 in solution currently in the H-Canyon. The resulting glass will be stored in canisters inside the shielded canyon facility in F-Canyon or the new Actinide Packaging and Storage Facility, when constructed, until DOE implements programmatic decisions on long-term storage, use or disposition of the material.

Plutonium-239 Solutions

DOE has decided to stabilize the plutonium-239 solutions stored in the H-Canyon facility to a metal, using the F-Canyon and FB-Line facilities. The plutonium solutions will be converted to metal using the currently operating F-Canyon and FB-Line facilities. The plutonium will be packaged in accordance with DOE's storage standard for plutonium and stored in an existing SRS vault until the Actinide Packaging and Storage Facility is available. The plutonium will be stored at the SRS until DOE implements long-term storage and disposition decisions on weapons useable forms of plutonium. The plutonium from this stabilization action will be prohibited from use in nuclear weapons. In addition, DOE is pursuing options for placing this material under international (e.g., IAEA) safeguards.

By stabilizing these materials in the F-Canyon DOE can avoid both start up and decontamination costs associated with a portion of the HB-Line that has never been operated. Moreover, this course of action will effect the expeditious completion of actions necessary to stabilize and convert these materials into forms suitable for safe storage and prepare the facilities for potential shutdown and deactivation.

FOR FURTHER INFORMATION CONTACT: For further information on the interim management of nuclear materials at the SRS or to receive a copy of the Final EIS, the initial ROD and Notice, the first supplemental ROD, or this second supplemental ROD contact: Andrew R. Grainger, NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, South Carolina 29804–5031, (800) 242–8259, Internet: drew.grainger@srs.gov

For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Energy (DOE) prepared the final environmental impact statement (EIS), ''Interim Management of Nuclear Materials'' (DOE/EIS–0220, October 20, 1995), to assess the potential environmental impacts of actions necessary to manage nuclear materials at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their ultimate disposition are made and implemented. Some of the particular materials considered in the EIS could present environment, safety and health vulnerabilities in their current storage condition.

The Final EIS identified processing to oxide using the H-Canyon and HB-Line facilities as the preferred alternative for the neptunium-237 solution and targets and the plutonium-239 solutions.

On December 12, 1995, DOE issued a ROD and Notice of Preferred Alternatives (60 FR 65300) on the interim management of several categories of nuclear materials at the SRS. In addition, DOE indicated that neptunium-237 solution and targets would be stabilized either by processing to oxide or vitrification, and that plutonium-239 solutions in H-Canyon would be stabilized through processing to metal, processing to oxide, or vitrification. DOE stated that it would select and implement one stabilization method for each of these material categories, and that the stabilization method chosen would be dependent upon further reviews of costs, schedules, and facility utilization options.

On February 8, 1996, DOE issued a Supplemental ROD (61 FR 6633) for the stabilization of two of the remaining categories of nuclear materials (Mark-16 and Mark-22 fuels, and other aluminum-clad targets) analyzed in the Final EIS.

On February 29, 1996, Westinghouse Savannah River Company, the Department's management and operating contractor for the Savannah River Site, advised DOE that, while engaged in a scheduled upgrade of safety authorization basis documentation, it had discovered that seismic (earthquake) analyses performed in the early 1980s were based on assumptions that are inconsistent with the as-built condition of the canyon facilities. As a result of this discovery, the transfer of nuclear materials into the canyon facilities was suspended while detailed analyses and reviews were conducted to ensure the safety of the canyon facilities and to determine if the information contained in the Interim Management of Nuclear Materials Final EIS was sufficient. The F-Canyon analyses have been completed; the H-Canyon analyses are expected to be completed in September 1996. The completed F-Canyon analyses indicate that the ability of the F-Canyon facilities to withstand a severe earthquake is equal to or better than that predicted in existing Safety Analysis Reports and the EIS. Based on a Supplement Analysis, DOE determined that a Supplemental EIS for nuclear materials stabilization in F-Canyon is not required.

After further consideration of the facility utilization strategy study, the Final EIS, budget and schedule projections, and comments from interested parties, DOE is now issuing its decisions for the stabilization of neptunium-237 solution and obsolete targets, and plutonium-239 solutions, the remaining two categories of nuclear materials at the SRS evaluated in the

Interim Management of Nuclear Materials EIS.

II. Alternatives Evaluated in the Final EIS

DOE evaluated the following alternatives for managing the neptunium-237 solution and obsolete reactor targets, and the plutonium-239 solutions at the SRS: (A) Continuing Storage (i.e., ''No Action'' within the context of NEPA), (B) Processing to Oxide, (C) Processing and Storage for Vitrification in the Defense Waste Processing Facility (DWPF), and (D) Vitrification (F-Canyon). In addition, Processing to Metal was also evaluated for the plutonium-239 solutions. The following is a brief description of the alternatives evaluated.

A. Continuing Storage (No Action)

Under this alternative, DOE would continue to store the materials in their current physical and chemical form. DOE would relocate or repackage materials stored in vaults or tanks to consolidate the material or to respond to an immediate safety problem. Periodic sampling, destructive and non-destructive examination, weighing, visual inspection and similar activities would continue in order to monitor the physical and chemical condition of the nuclear material. Chemicals would be added to existing solutions in order to maintain concentration and chemistry within established parameters. Repackaging would include removing materials from damaged storage containers and placing them in new containers or placing the damaged containers in larger containers.

A variety of activities could be required to maintain the materials in their current physical and chemical form. For example, DOE would maintain facilities in good working condition and would continue to provide utilities (water, electricity, steam, compressed gas, etc.) and services (security, maintenance, fire protection, etc.) for each facility. Training activities would ensure that personnel maintain the skills necessary to operate the facilities and equipment. DOE would continue with ongoing projects to alleviate facility-related vulnerabilities associated with storage of the materials and projects to upgrade or replace aging equipment (ventilation fans, etc.).

B. Processing to Oxide

DOE would convert existing solutions of neptunium-237 and plutonium-239 to an oxide in HB-Line. Additional neptunium-237 solution would be generated in the processing of the obsolete reactor targets. After conversion of the plutonium and neptunium solutions to oxides, the oxides would be packaged and stored in accordance with applicable criteria in an existing vault until a new Actinide Packaging and Storage Facility is available.

C. Processing and Storage for Vitrification in the DWPF

DOE would perform research and development work to develop a method for chemically adjusting existing solutions and solutions that would result from the dissolution of the obsolete neptunium-237 targets in order to transfer them to the high level waste tanks in H-Area. The research and development work would be done to ensure nuclear criticality safety due to the amount of plutonium-239 in the existing solutions, and to evaluate the effects of the nuclear materials on the systems and facilities used to store and treat the liquid high level waste.

Upon completion of the studies, existing solutions of neptunium-237 and plutonium-239 would be chemically adjusted and transferred to the high level waste tanks via underground pipelines. DOE would transport the obsolete targets from the K-Reactor area to F- or H-Canyon where they would be dissolved in nitric acid. The resulting solutions would be chemically adjusted and transferred to the high level waste tanks via underground pipelines. The solutions would be mixed with the existing volume of high level waste stored in the F- or H-Area tanks. The bulk of the radioactivity in the solutions would eventually be immobilized in borosilicate glass in the vitrification process at the DWPF. The glass would be contained within stainless steel canisters that would be stored in a facility adjacent to the DWPF pending geologic disposal by DOE. The bulk of the liquid would be immobilized by the Saltstone Facility into a grout containing very low levels of radioactivity. The grout would be poured into concrete vaults located at the Saltstone Facility.

D. Vitrification (F-Canyon)

For this alternative, DOE would utilize the vitrification capability that it decided in the December 12, 1995, ROD to install in F-Canyon for the stabilization of the americium and curium solution. The existing solutions of neptunium-237 and plutonium-239, currently stored in H-Canyon, would be transported to F-Canyon for vitrification upon development or procurement of a suitable shipping container. The obsolete neptunium-237 targets would be transported from K-Reactor area to F-Canyon, dissolved in nitric acid, and the neptunium chemically separated from other materials (principally aluminum). The resulting neptunium would be vitrified in conjunction with the existing neptunium solution. Neptunium separated from the processing of the Mark-16 and Mark-22 fuels pursuant to the February 8, 1996 ROD would be vitrified in conjunction with the existing neptunium materials. For the plutonium-239 this vitrified form would not meet the requirements of the storage standard (DOE Criteria for Safe Storage of Plutonium Metals and Oxides (DOE–STD–3013–94)), which prescribes stable oxide or metal. Furthermore, the vitrified form would require additional processing to prepare its disposition.

E. Processing to Metal

This alternative applies only to the plutonium-239 solutions. Under this alternative, DOE would transport the plutonium-239 solutions from H-Canyon to F-Canyon using the same container described above to transport the neptunium-237 solution. In F-Canyon, the plutonium solutions would be converted to plutonium metal using the FB-Line facility. After conversion, the metal would be packaged and stored in accordance with DOE's plutonium storage standard (DOE–STD–3013–94) in an existing vault until a new Actinide Packaging and Storage Facility is available. A new glove box is being installed in FB-Line to provide the equipment necessary to meet the storage standard criteria for the packaging of plutonium metal. The plutonium metal would be stored at the SRS until programmatic decisions are made and implemented by DOE on long-term storage or disposition.

III. Environmental Impacts of Alternatives

The Final EIS for the Interim Management of Nuclear Materials analyzed the potential environmental impacts that could result from implementation of the above management alternatives. DOE has concluded that there would be minimal environmental impact from implementation of any of these alternatives in the areas of geologic resources, ecological resources (including threatened or endangered species), cultural resources, aesthetic and scenic resources, noise, and land use. Impacts in these areas would be limited because facility modifications or construction of new facilities would occur within existing buildings or industrialized portions of the SRS. DOE

anticipates that the existing SRS workforce would support any construction projects and other activities required to implement any of the alternatives. As a result, DOE expects negligible socioeconomic impacts from implementing any of the alternatives.

Management alternatives requiring the use of the large chemical separations facilities would have greater environmental impacts (e.g., radiological, waste generation) during the actual dissolving, processing or conversion activities than simply storing these materials in the F- and H-Canyon facilities. After dissolving, processing and conversion activities have stabilized these materials, however, impacts of normal facility operations related to management of these materials would decline, and potential impacts of accidents associated with these materials would be reduced, with certain kinds of accidents eliminated (e.g., solution spills or releases). Potential health effects from normal operations from any of the alternatives, including those involving the operation of the canyon facilities, would be low and well within regulatory limits. All of the alternatives require some use of the canyon facilities.

Annual impacts from normal operations and potential accidents associated with nuclear material storage would be reduced after material stabilization alternatives are implemented. Since actively operating facilities have potentially larger environmental impacts, stabilization alternatives requiring longer periods of time to complete are estimated to have relatively higher impacts than alternatives requiring less time to complete.

Continuing Storage (or ''No Action'') alternatives would result in low annual environmental impacts, but the impacts would continue for an indefinite period of time. Stabilization alternatives would be expected to result in slightly higher annual environmental impacts than ''No Action'' in the near-term, but would result in lower environmental impacts upon completion of the stabilization action. Under Continuing Storage alternatives, although chemicals would be added to existing solutions in order to maintain concentrations and chemistry within established parameters, no actions would be taken to chemically or physically stabilize the storage conditions. All of the stabilization alternatives, upon completion of the actions required, would reduce the potential for accidents and associated consequences. Several of the stabilization alternatives would involve a short-term increase in the risks from accidents until the required actions are completed.

Emissions of hazardous air pollutants and releases of hazardous liquid effluents for any of the alternatives would be within applicable federal standards and existing regulatory permits for the SRS facilities. Similarly, high level liquid waste, transuranic waste, mixed hazardous waste and low level solid waste generated by implementation of any of the alternatives would be handled by existing waste management facilities. All of the waste types and volumes are within the capability of the existing SRS waste management facilities for storage, treatment or disposal.

SRS facilities that will be used to stabilize and store the nuclear materials incorporate engineered features to limit the potential impacts of facility operations to workers, the public and the environment. All of the engineered systems and administrative controls are subject to DOE Order requirements to ensure safe operation of the facilities. No other mitigation measures have been identified; therefore DOE need not prepare a Mitigation Action Plan.

IV. Other Factors

In addition to comparing the environmental impacts of implementing the various alternatives, DOE considered other factors in making the decisions announced in this supplemental ROD. These other factors included: (1) The need to construct and operate modified or new facilities (e.g., a vitrification facility) and the reliability of older facilities, (2) nonproliferation concerns, involving potential impacts to United States nonproliferation policy as affected by both the operation of certain facilities and the attractiveness of the managed nuclear materials for potential weapons use, (3) implementation schedules, (4) technology availability, (5) labor availability and core competency, (6) level of custodial care for the continued safe management of the nuclear materials, (7) cost and budget considerations, (8) technical uncertainty (e.g., radiation and chemically induced changes to solution chemistry, criticality concerns for undeveloped processes), and (9) comments received during the scoping period for the EIS on the Interim Management of Nuclear Materials, and comments received on the Draft and Final EISs.

V. Environmentally Preferable Alternatives

As described in the Final EIS for Interim Management of Nuclear Materials, certain management alternatives are expected to result in lower environmental impacts than others. However, a single alternative was rarely estimated to have lower impacts for all environmental factors evaluated by DOE. For example, an alternative might be expected to result in lower releases of hazardous pollutants to air or water than other alternatives, but might generate slightly higher amounts of radioactive waste. DOE reviewed the environmental impacts estimated for the alternatives evaluated for the neptunium-237 solution and targets, and plutonium-239 solutions, and identified the following as the environmentally preferable alternative for each material. The health and environmental effects from any of the alternatives are all low and well within regulatory limits.

Neptunium-237—Vitrification (F-Canyon)

Vitrification in F-Canyon is the environmentally preferable alternative for stabilizing solutions and targets containing neptunium. Although vitrification in F-Canyon is estimated to result in slightly higher radiological doses to the SRS workers, it is estimated to result in the lowest potential radiological doses to the offsite public. Similarly, although it could result in higher airborne emissions of hazardous pollutants than the other alternatives, the levels of liquid effluent emissions would be comparable to the other alternatives. Vitrification (F-Canyon) would generate the least amount of high level, transuranic and mixed waste, and would generate comparable amounts of low level waste to the other alternatives.

Plutonium-239—Vitrification (F-Canyon)

Vitrification in F-Canyon is the environmentally preferable alternative for stabilizing the plutonium-239 solutions stored in H-Canyon. Of the stabilization alternatives, vitrification in F-Canyon is estimated to result in the lowest radiological doses to the offsite public and the SRS workers; result in comparable levels of hazardous pollutant emissions to the air and water; and result in the least amount of transuranic, mixed, and low level waste with comparable amounts of high level waste. However, as indicated above, this alternative would require additional processing of the vitrified plutonium to prepare it for disposition.

VI. Decision

After careful consideration of the issues and public comments received concerning the stabilization and management of SRS nuclear materials, the analyses of environmental impacts (including the ability of the F-Canyon facilities to withstand severe seismic events) and other factors, DOE has made the following decisions for the interim management of neptunium-237 and plutonium-239:

Neptunium-237—Vitrification (F-Canyon)

DOE has decided to stabilize the neptunium-237 solution and obsolete reactor targets by vitrification in F-Canyon (the environmentally preferable alternative). The neptunium solution will be transported from H-Canyon to F-Canyon in a container meeting DOE Order 0460.1, PACKAGING AND TRANSPORTATION SAFETY requirements. Transport of the package will be subjected to management controls, such as restrictions on vehicle speed, route specifications, and escort requirements. The nine obsolete reactor targets will be transported from K-Reactor to F-Canyon. At F-Canyon, the targets will be dissolved and processed to separate the neptunium from other materials (principally aluminum). These other materials will be sent to the high level waste tanks for eventual treatment through the Saltstone and DWPF facilities. The existing neptunium solution and those generated from the obsolete reactor targets will be placed in a glass matrix, using vitrification equipment to be installed in F-Canyon (as announced in the December 12, 1995 ROD and Notice for the vitrification of the americium and curium solution). In addition, neptunium separated from the stabilization of the Mark-16 and Mark-22 fuels (as announced in the February 8, 1996 supplemental ROD) will be stabilized in conjunction with these other solutions. The resulting stainless steel canisters containing the neptunium glass will be stored in the F-Canyon or a new Actinide Packaging and Storage Facility, when constructed, until DOE implements programmatic decisions on the future use or disposition of the neptunium.

DOE selected vitrification in F-Canyon for several reasons. Although the SRS has an existing facility (HB-Line, Phase II) designed to purify and convert neptunium (and plutonium-239) to an oxide, it has never been operated. DOE can avoid both the costs to start up this portion of the HB-Line facility and the future decontamination of the facility by vitrifying the solution in F-Canyon. DOE could transfer the neptunium solution in H-Canyon to the adjacent high level waste tanks and eventually vitrify them in the DWPF. However, the physical form of glass produced by the DWPF would render any future recovery and use of the neptunium impractical due to cost and technical complexity.

To maintain the neptunium in a concentrated physical form, thus preserving the potential for future use (for the potential production of plutonium-238), DOE evaluated alternatives for converting the neptunium to either an oxide or glass. Either form could support future use of the material, if required. DOE has found that the glass form offers significant advantages over the oxide form for future storage and handling. The glass matrix produced by the vitrification process provides some ''self-shielding'' compared to oxide. This reduces the radiation levels associated with the neptunium, thereby reducing exposure to workers. The glass matrix is also a much less dispersible form of radioactive material compared to the oxide in the event of a severe facility-related accident, such as a major fire. DOE has decided to dissolve and process the nine obsolete reactor targets because it would be advantageous to recover and consolidate the neptunium-237 into a single physical form for continued safe storage. The amount of material to be dissolved and processed is very small and can be done at minimal cost.

Potential waste generation impacts are lower for the selected vitrification alternative than for the processing to oxide alternative. Potential safety and health impacts to workers and the public, and potential impacts to air and water resources are comparable between the two alternatives. Potential safety, health and environmental impacts are low and well within regulatory and management control limits.

Plutonium-239—Processing to Metal

DOE has decided to stabilize the plutonium-239 solutions by processing them to metal in the currently operating F-Canyon and FB-Line facilities. Plutonium-239 solutions will be transported from H-Canyon to F-Canyon in a container meeting DOE Order 0460.1, PACKAGING AND TRANSPORTATION SAFETY requirements. Transport of the package will be subjected to management controls, such as restrictions on vehicle speed, route specifications, and escort requirements. The plutonium-239 solutions will undergo processing as necessary to remove impurities that would interfere with the conversion to metal process in FB-Line. The resulting stabilized plutonium metal will be packaged in accordance with DOE's storage standard (DOE–STD–3013–94) and stored in an existing vault at the SRS until a new Actinide Packaging and Storage Facility is available. The plutonium will be stored until DOE implements long-term storage and disposition decisions on weapons useable forms of plutonium.

As indicated above, the SRS could use a never-before operated portion of the HB-Line to stabilize the plutonium-239 to an oxide. Startup and future decontamination costs associated with this facility will be avoided by processing the plutonium to metal in the F-Canyon and FB-Line facilities. DOE evaluated transferring the plutonium-239 solutions to the adjacent high level waste tanks for storage and subsequent vitrification in DWPF. This alternative would be more technically complex and potentially more expensive, and added criticality controls would be needed for tanks and facilities used for storage and treatment of the high level liquid waste.

DOE also considered vitrifying the plutonium in F-Canyon (the environmentally preferable alternative) using the same equipment in F-Canyon as planned for the vitrification of the americium/curium and neptunium solutions. This would produce a glass matrix with similar safe storage characteristics as described above for the vitrified neptunium. Demonstration and research activities are currently ongoing concerning vitrification of surplus plutonium pursuant to the Department's Materials Disposition program, but those activities focus primarily on stable forms of plutonium that are not in solution. Additional research and analytical work would be required for vitrification of plutonium solutions which may pose a health, safety or environmental concern in the next 10 years to ensure adequate criticality controls for the conversion process and for the safe storage of the product. It is expected that vitrification equipment modifications would be required to ensure adequate criticality control. Thus, while vitrification is not as viable as processing to metal in the near term, the decision to stabilize the plutonium to metal is compatible with all alternatives being considered for disposition of surplus weapons-useable plutonium.

Potential waste generation impacts from processing to metal are comparable to the vitrification (environmentally preferable) alternative for high level waste, but greater for transuranic and

low level wastes. Potential safety and health impacts to workers and the public, and potential impacts to air and water resources for the conversion activity are comparable for the processing to metal, oxide, or vitrification alternatives. Potential safety, health and environmental impacts are low and well within regulatory and management control limits.

The selected stabilization action will result in plutonium metal, a weapons-usable product. However, the quantity produced (including the metal to be produced as a result of decisions made in the December 12, 1995 ROD and Notice) will be a small fraction of DOE's existing inventory of plutonium metal, and DOE believes this small amount does not present nuclear proliferation concerns. None of the stabilization alternatives would denature the plutonium in a way that would preclude its recovery and use in nuclear weapons manufacture. The stabilized plutonium will not be used for nuclear explosive purposes. In addition, DOE is pursuing options for placing surplus plutonium-239 under international (e.g., IAEA) safeguards.

Finally, as noted above, the H-Canyon seismic analyses are expected to be completed in September 1996. A decision now to move neptunium and plutonium solutions from H-Canyon to F-Canyon is permissible and appropriate prior to the completion of the H-Canyon analyses because removal of the materials from H-Canyon would not involve operation of the HB-Line, but would result in reducing the amount of nuclear materials present in H-Canyon. No additional nuclear materials will be introduced into H-Canyon until the on-going seismic analyses are complete.

VII. Conclusion

The Final EIS analyzes interim management alternatives for nuclear materials at the SRS. Those alternatives and the decisions associated with the safe management of these materials directly affect the operational status of the nuclear material processing facilities at the Site. The decisions in this supplemental ROD, as in the December 12, 1995 ROD and Notice and February 8, 1996 Supplemental ROD, are structured to effect the completion of actions necessary to stabilize or convert nuclear materials into forms suitable for safe storage and prepare the facilities for potential subsequent shutdown and deactivation. The actions being implemented will support efficient, cost-effective consolidation of the storage of nuclear materials and will result in stabilization of the nuclear materials and alleviation of associated vulnerabilities within the time frame recommended by the DNFSB.

The stabilization decisions utilize existing facilities and processes to the extent practical; can be implemented within expected budget constraints and with minimal additional training for involved personnel; rely upon proven technology; use an integrated approach considering a multiplicity of factors; and represent the optimum use of facilities to stabilize the materials in the shortest amount of time. Only minor modifications of the canyon facilities will be required (loading and unloading stations, and modification to the vitrification equipment to be installed for the americium/curium solution stabilization as announced in the December 12, 1995 ROD and Notice).

Several years will be required to achieve stabilization of the nuclear materials within the scope of this and the previous RODs. Stabilization of the candidate nuclear materials will entail the operation of many portions of the chemical processing facilities and, consistent with DNFSB Recommendation 94–1, will preserve DOE's capabilities for the management and stabilization of other nuclear materials until programmatic decisions are made.

Issued at Washington, DC, September 6, 1996.

Alvin L. Alm,

Assistant Secretary for Environmental Management.

[FR Doc. 96–23352 Filed 9–12–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–761–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

September 9, 1996.

Take notice that on September 4, 1996, Koch Gateway Pipeline Company (Koch Gateway), 600 Travis Street, Houston, Texas, 77251, filed in Docket No. CP96–761–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate an eight-inch tap; a dual six-inch meter station, and approximately 1,700 feet of eight-inch pipeline and appurtenances to serve Union Carbide Corporation (Union Carbide), an end-user, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway proposes to install the new delivery point on its existing lateral line, designated as Index 300–22 in St. Charles Parish, Louisiana to satisfy Union Carbide's request for service, on behalf of Coral Energy Resources, L.P. (Coral), a natural gas marketer. Koch Gateway states that all work will be within Koch Gateway's existing right-of-way and Union Carbide's existing plant site. Koch Gateway further states that the initial transportation service, of an estimated 20,000 MMBtu of gas per day to be delivered to Union Carbide, will be pursuant to an Interruptible Transportation Service (ITS) agreement with Coral.

Koch Gateway further states it will construct and operate the proposed facilities in compliance with 18 CFR, Part 157, Subpart F, and that the proposed activities will not affect Koch Gateway's ability to serve its other existing customers.

Koch Gateway estimates the cost of construction to be $420,000. Koch Gateway states that although the proposed service is interruptible, construction of the tap and lateral is consistent with Section 16 of the General Terms and Conditions of Koch Gateway's tariff regarding installation of lateral lines. Koch Gateway explains that Coral has agreed to reimburse Koch Gateway a dollar amount to be calculated on a sliding scale if it fails to take a specified average quantity over the first two years of its ITS agreement.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23453 Filed 9–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–199–000]

Mississippi River Transmission Corporation; Notice of Informal Settlement Conference

September 9, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on September 18, 1996, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purposes of exploring the possible settlement of the referenced docket.

Any party, as defined by 18 CFR 385.102(c) or any participant, as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, contact Kathleen M. Dias at (202) 208–0524 or Russell B. Mamone at (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23454 Filed 9–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–744–000]

Transcontinental Gas Pipe Line Corporation, Texas Eastern Transmission Corporation; Notice of Application

September 9, 1996.

Take notice that on August 26, 1996, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251–1396, and Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 1642, Houston, Texas 77251–1642, filed a joint application pursuant to Section 7(c) of the Natural Gas Act for the necessary certificate authorization to (a) modify the description of service provided by Texas Eastern to Transco pursuant to Texas Eastern's Rate Schedule X–28 from a ''gas lending and borrowing'' service to a storage service, and (b) make changes to Transco's Rate Schedule S–2, all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Transco and Texas Eastern state that the purpose of this filing is to update these certificated rate schedules to reflect certain modifications and regulatory requirements in the post Order No. 636 environment and to complete the updating process that was initiated during Texas Eastern's restructuring proceeding in Docket No. RS92–11. To convert the Rate Schedule X–28 Agreement to a storage service, Transco and Texas Eastern state that they agree, among other things, to (a) delete the reference to the Oakford storage facility in recognition of the fact that Texas Eastern operates its storage facilities on an aggregated basis, (b) include a provision for storage injection and withdrawal rights and charges, and (c) include a provision to address imbalances which occur if the quantity of gas withdrawn from storage is greater or less than the quantity scheduled.

Transco and Texas Eastern state that, upon Commission approval of the requested certificate amendment, they will file pursuant to Section 4 of the NGA and part 154 of the Commission's Regulations, conforming changes to Texas Eastern's Rate Schedule X–28 and Transco's Rate Schedule S–2. Transco and Texas Eastern state that they have agreed to extend the term of Rate Schedule X–28 until April 15, 2001 and, thereafter until terminated upon twelve months prior written notice by either party, provided that the Commission approves the requested certificate authorizations without modification or, subject only to modifications acceptable to both parties. Transco states that it agreed with its Rate Schedule S–2 customers to execute amendments to extend the S–2 agreements until April 15, 2001, subject to any necessary Commission authorizations.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 30, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirments 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco and Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23452 Filed 9–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2034–000, et al.]

Massachusetts Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 6, 1996.

Take notice that the following filings have been made with the Commission:

1. Massachusetts Electric Company

[Docket No. ER96–2034–000]

Take notice that on August 30, 1996, Massachusetts Electric Company filed an amendment to its original filing in this docket. The amendment responds to a Commission staff request in regard to the Beachmont station service contract with the Massachusetts Bay Transportation Authority.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Tenaska Power Services Company, Mock Resources, Inc., Western States Power Providers, Inc., Vastar Power Marketing Inc., Seagull Power Services Inc.

[Docket No. ER94–389–008, Docket No. ER95–300–007, Docket No. ER95–1459–004, Docket No. ER95–1685–003, and Docket No. ER96–342–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 8, 1996, Tenaska Power Services Company filed certain information as required by the Commission's May 26, 1994, order in Docket No. ER94–389–000.

On July 29, 1996, Mock Resources, Inc. filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–300–000.

On July 9, 1996, Western States Power Providers, Inc. filed certain information as required by the Commission's October 10, 1995, order in Docket No. ER95–1459–000.

On July 11, 1996, Vastar Power Marketing Inc. filed certain information as required by the Commission's October 26, 1995, order in Docket No. ER95–1685–000.

On August 5, 1996, Seagull Power Services Inc. filed certain information as required by the Commission's February 15, 1996, order in Docket No. ER96–342–000.

3. New York State & Electric Gas Corporation

[Docket No. ER96–2466–000]

Take notice that New York State & Electric Gas Corporation (NYSEG) on August 21, 1996, tendered for filing pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.13, amendment to NYSEG's July 18, 1996, filing in the above-referenced docket.

Copies of the filing were served upon the NYPSC, the New York Power Authority, Multiple Intervenors, Anchor Glass Container Corp., Transelco, Gunlocke Co., IBM Corp., Tessy Plastics, and Sysco Frosted Foods.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER96–2856–000]

Take notice that on August 30, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement between itself and Cinergy Corporation (Cinergy). The agreement establishes Cinergy as a customer under Wisconsin Electric's Coordination Sales Tariff (FERC Electric Tariff Original Volume No. 2).

Wisconsin Electric respectfully requests an effective date sixty days after filing. Wisconsin Electric is authorized to state that Cinergy joins in the requested effective date.

Copies of the filing have been served on Cinergy, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER96–2857–000]

Take notice that on August 30, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which KN Marketing, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 6, 1996.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. The Cleveland Electric Illuminating Company

[Docket No. ER96–2858–000]

Take notice that on August 28, 1996, The Cleveland Electric Illuminating Company (CEI) filed pursuant to Rule 205 of the Federal Power Act and Part 35 of the FERC's Regulations thereunder electric power service agreements between CEI and Public Service Electric & Gas Company, dated August 13, 1996; CEI and Morgan Stanley Capital Group Inc., dated August 15, 1996; Aquila Power Corporation, dated August 16, 1996; and CEI and PacifiCorp Power Marketing, Inc., dated August 19, 1996. CEI requests the effective dates of the agreements be August 13, 1996; August 15, 1996; August 16, 1996, and August 19, 1996, respectively.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER96–2859–000]

Take notice that on August 30, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated September 1, 1996 between Cinergy, CG&E, PSI and Phibro Inc. (Phibro).

The Interchange Agreement provides for the following service between Cinergy and Phibro:

1. Exhibit A—Power Sales by Phibro
2. Exhibit B—Power Sales by Cinergy

Cinergy and Phibro have requested an effective date of September 1, 1996.

Copies of the filing were served on Phibro, Inc., Connecticut Department of Public Utility Control, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Company

[Docket No. ER96–2861–000]

Take notice that on August 30, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated August 29, 1996, establishing Sonat Power Marketing Inc. as a point-to-point transmission customer under the terms of WP&L's Transmission Tariff.

WP&L requests an effective date of August 2, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Central Maine Power Company

[Docket No. ER96–2862–000]

Take notice that on August 30, 1996, Central Maine Power Company (CMP), tendered for filing Service Agreements with Bangor Hydro-Electric Company and Maine Public Service Company for Non-Firm Point-to-Point Transmission Service, the form of which is contained as an Attachment to CMP's pro forma tariff for open access transmission service.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Company

[Docket No. ER96–2863–000]

Take notice that on August 30, 1996, the Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, three signed service agreements under FERC Electric Tariff Volume No. 4 with Delhi Energy Services, Inc., Questar Energy Trading Inc., and the Power Company of America, L.P., respectively. Also submitted with this filing is a Certificate of Concurrence for each company with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of September 1, 1996.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Electric & Gas Company

[Docket No. ER96–2864–000]

Take notice that on August 29, 1996, South Carolina Electric & Gas Company (SCE&G) submitted service agreements establishing Carolina Power & Light Company (CP&L), Sonat Power Marketing, Inc. (Sonat), LG&E Power Marketing, Inc. (LG&E), Virginia Power (Virginia), and Southern Company Services, Inc. (Southern) as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to this filing for the service agreements, except for that of CP&L which is requested to be effective August 9, 1996. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon CP&L, Sonat, LG&E, Virginia, Southern, and the South Carolina Public Service Commission.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER96–2865–000]

Take notice that on August 30, 1996, New England Power Company (NEP) submitted for filing two documents relating to its sale of electricity to the Massachusetts Government Land Bank (Land Bank) at Fort Devens, Massachusetts: (1) An All Requirements Bulk Power Supply Contract and Service Agreement between NEP and the Land Bank; and (2) an Amendment to the January 2, 1974 FERC, Tariff No. 1 Service Agreement between NEP and the Department of the Army for the supply of the latter's power supply requirements at Fort Devens.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER96–2866–000]

Take notice that on August 30, 1996, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with PanEnergy Power Services, Inc. for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on September 1, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER96–2867–000]

Take notice that on August 30, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Pennsylvania Power & Light Company (PP&L). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to PP&L and PP&L will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on August 31, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and PP&L.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. New York State Electric & Gas Corporation

[Docket No. ER96–2868–000]

Take notice that on August 30, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Central Vermont Public Service Corporation (CVPS). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to CVPS and CVPS will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on August 31, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and CVPS.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. State Line Energy, L.L.C.

[Docket No. ER96–2869–000]

Take notice that on August 30, 1996, State Line Energy, L.L.C. (State Line Energy) filed an application requesting acceptance of its proposed market-based rate schedule, waiver of certain regulations and blanket approvals. State Line Energy is a subsidiary of The Southern Company (Southern), a registered holding company under the Public Utility Holding Company Act of 1935. State Line Energy is also an associate company of Southern's electric utility operating companies, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER96–2870–000]

Take notice that on September 3, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which National Gas & Electric L.P. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 5, 1996.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER96–2871–000]

Take notice that on September 3, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Enron Power Marketing, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 5, 1996.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Illinois Power Company

[Docket No. ER96–2872–000]

Take notice that on September 3, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Ohio Edison Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 2, 1996.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. UtiliCorp United Inc.

[Docket No. ER96–2873–000]

Take notice that on September 3, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *PacifiCorp Power Marketing.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *PacifiCorp Power Marketing* pursuant to the tariff, and for the sale of capacity and energy by *PacifiCorp Power Marketing* to WestPlains Energy-Kansas pursuant to *PacifiCorp Power Marketing's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *PacifiCorp Power Marketing.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. UtiliCorp United Inc.

[Docket No. ER96–2874–000]

Take notice that on September 3, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *PacifiCorp Power Marketing.* The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *PacifiCorp Power Marketing* pursuant to the tariff, and for the sale of capacity and energy by *PacifiCorp Power Marketing* to Missouri Public Service pursuant to *PacifiCorp Power Marketing's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *PacifiCorp Power Marketing.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. PacifiCorp

[Docket No. ER96–2875–000]

Take notice that on September 3, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Transmission Service Agreements with various customers under, PacifiCorp's FERC Electric Tariff, Original Volume No. 10.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Pennsylvania Power & Light Company

[Docket No. OA96–221–000]

Take notice that on August 16, 1996, Pennsylvania Power & Light Company tendered for filing an informational filing setting forth the rates for transmission service and ancillary services, and the charge for power service applicable under its requirements wholesale electric service contracts providing for bundled fixed rates.

Comment date: September 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Vineland Municipal Electric Utility

[Docket No. OA96–223–000]

Take notice that on September 3, 1996, Vineland Municipal Electric Utility (VMEU) tendered for filing an application for waiver from the requirements of Order No. 888 to submit a transmission open access tariff and of Order No. 889 to maintain an Open-Access Same Time Information System and comply with associated standards of conduct.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Citizens Utilities Company

[Docket No. OA96–224–000]

Take notice that on September 3, 1996, Citizens Utilities Company (Citizens) tendered for filing a request for waiver for Vermont Electric Division, in which Citizens requests that the Commission grant a waiver of Citizens' Vermont Electric Division from compliance with the Standards of Conduct set in Commission Order No. 889 and Section 37.4 of the Commission's Regulations, 18 CFR § 37.4.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. People's Electric Cooperative

[Docket No. OA96–225–000]

Take notice that on September 3, 1996, People's Electric Cooperative filed in the above docket a request pursuant to Section 35.28(e) of the Commission's Regulations for a waiver of the requirements of Order No. 889 that it establish or participate in an OASIS and implement Standards of Conduct.

Comment date: October 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23494 Filed 9–12–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of October 2 Through October 6, 1995

During the week of October 2 through October 6, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf

reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Appeals

Cohen & Cotton, 10/2/95, *VFA–0073*

Cohen & Cotton filed an Appeal from a partial denial by the Western Area Power Administration (WAPA) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that material which WAPA withheld by claiming the protection of Exemption 5 was similar to information, contained in the same document, that had been released in response to the Request. Although the statements in a portion of the withheld information were inaccurate, inaccuracy cannot shield factual information from release.

Ikoi Kawata, 10/4/95 *VFA–0063*

Ikoi Kawata filed an Appeal from a denial by the FOIA/Privacy Act Division of the Office of the Executive Secretariat of a Request for Information submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the request was unclear, and the resulting search produced no responsive documents. Accordingly, the Appeal was denied.

Quanterra Environmental Services, 10/2/95, *VFA–0078*

Quanterra Environmental Services (Quanterra) filed an Appeal from a determination issued by the Richland Field Office (Richland) in response to a request for information Quanterra submitted under the Freedom of Information Act (FOIA). Quanterra asserted that the search was inadequate. The DOE determined that the search was adequate and that any information Richland may have was not in the form Quanterra requested or desired. Accordingly, the Appeal was denied.

Personnel Security Hearing

Albuquerque Operations, 10/2/95, *VSO–0038*

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 CFR Part 710. The individual was alleged to be suffering from alcohol abuse. In addition, he was alleged to be unreliable because he violated a commitment to abstain from alcohol when he indicated in an interview that he would try to quit using alcohol. With respect to whether the respondent had violated an agreement to abstain from alcohol, the Hearing Officer found that the respondent's statement that he would attempt to stop using alcohol was not a binding agreement. The principal issue in the case was whether the respondent was rehabilitated, as he agreed that he was an alcoholic. The respondent ceased drinking in December 1994 and had not resumed the use of alcohol as of the August 22, 1995 hearing. The Hearing Officer determined that there was insufficient evidence of rehabilitation since both the DOE psychiatrist and the respondent's psychologist testified that to demonstrate rehabilitation, the respondent would have to abstain from alcohol use for one year and participate in a formal alcohol treatment program. Accordingly, the Hearing Officer found that the respondent's access authorization should not be reinstated. However, the Hearing Officer recommended that the respondent be considered for the Employee Assistance Program Referral Option.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Suburban Motor Freight, Inc. et al	RF304–12423	10/05/95
City of Raleigh et al	RF272–86122	10/05/95
Crude Oil Supply Ref Dist	RB272–53	10/02/95
Crude Oil Supply Ref Dist	RB272–29	10/02/95
Crude Oil Supply Ref. Dist.	RB272–52	10/05/95
Farmers Union Oil Co. et al	RK272–152	10/05/95
Gulf Oil Corporation/Kemmer & Bristow Grocery	RF300–18375	10/06/95
McKelvey Trucking Company	RJ272–1	10/03/95
Tennessee Truck Lines	RC272–296	10/02/95
Texaco Inc./Bill's Texaco et al	RF321–10575	10/02/95
Texaco Inc./Pacific Service Stations Co	RF321–20674	10/05/95
Texaco Inc./Pecan Shoppe of Santa Rosa et al	RF321–13958	10/02/95
Texaco Inc./Stuckey's Store #228	RF321–16333	10/02/95
Stuckey's Store #248	RF321–16334	
Stuckey's Store #244	RF321–16335	

Dismissals

The following submissions were dismissed:

Name	Case No.
Albuquerque Operations Office	VSO–0052
Ernest A. Lado	VFA–0072
Glockner Oil Co	RF321–20704
Hawn Freeway Texaco	RF321–20203
Jay M. Baylon	VFA–0081
Northwest Inter-District Council	RF272–88268
Stepan Chemical Company	RF321–20673
U.S. Borax	RF272–99132

[FR Doc. 96–23486 Filed 9–12–96; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of September 25 Through September 29, 1995

During the week of September 25 through September 29, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 29, 1996.

Richard W. Dugan,

Acting Director Office of Hearings and Appeals.

Personnel Security Hearing

Oak Ridge Operations Office, 9/26/95, *VSO–0034*

Under the provisions set forth in 10 C.F.R. Part 710, the Department of Energy, Oak Ridge Operations Office (DOE/OR) suspended the access authorization (''L'' level security clearance) of an individual based upon derogatory information received by the DOE/OR incident to the individual's arrest on a charge of indecent exposure. Following a personnel security interview and evaluation by a DOE consultant psychiatrist, DOE/OR suspended the individual's access authorization under disqualifying criteria set forth in: (1) 10 C.F.R. § 710.8(h), that the individual has ''[a]n illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist * * * causes, or may cause, a significant defect in judgment or reliability,'' and (2) 10 C.F.R. § 710.8(1), that the individual has ''[e]ngaged in [] unusual conduct or is subject to circumstances which tend to show that the individual is not honest, reliable, or trustworthly; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.'' Following a hearing convened at the request of the individual, the Office of Hearings and Appeals Hearing Officer found in the Opinion that (i) despite conflicts in the psychiatric testimony, it was clear that the individual suffered from a mental condition which caused a significant defect on his judgment and reliability, (ii) the individual was not rehabilitated but needed to continue medication and psychotherapy indefinitely, and (iii) there was a distinct possibility that the individual continues to conceal the nature of his condition and therefore would be subject to blackmail or coercion in the event of future incidents. Accordingly, the Hearing Officer concluded in the Opinion that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refund Distribution	RB272–49	09/25/95
Grant Joint Union High School et al	RF272–97528	09/28/95
Gulf Oil Corporation/Hydro Conduit Corp. et al	RF300–21349	09/27/95
Gulf Oil Corporation/Medfield Gulf	RF300–21408	09/28/95
Magna Corp. (BPCI)	RF300–21413	
Town of West Warwick	RF300–21414	
Texico Inc./4-Way Service et al	RF321–16408	09/27/95
Texaco Inc./Bill Lee Ivans	RF321–12207	09/28/95
Hunts Point Fuel Corp.	RF321–17353	
Walcoal, Inc. et al	RK272–77	09/28/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Government Accountablity Project	VFA–0085
Government Accountability Project	VFA–0086

[FR Doc. 96–23487 Filed 9–12–96; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of September 18 Through September 22, 1995

During the week of September 18 through September 22, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management*: *Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 30, 1996.

Richard W. Dugan,

Acting Director Office of Hearings and Appeals.

Appeal

James W. Simpkin, 9/18/95, *VFA–0067 VFA–0068*

On August 18, 1995, James W. Simpkin (Simpkin) filed a joint Appeal from two determinations issued to him on July 20, 1995, by the Albuquerque Operations Office (AL) of the Department of Energy (DOE). The determinations were issued in response to requests for information submitted by Simpkin under the Freedom of Information Act (FOIA). The AL issued a determination stating that no documents exist responsive to some parts of Simpkin's first and second requests. However, the AL provided some documents responsive to other parts of Simpkin's first and second requests. In his Appeal, Simpkin asked the Office of Hearings and Appeals (OHA) to direct the AL to conduct a new search for responsive documents. In considering the Appeal, the OHA found that with respect to Simpkin's first request, there was no need to consider the issue on Appeal because the AL agreed to send Simpkin a new copy of the responsive document requested by Simpkin. With respect to Simpkin's second request, the OHA found that the search conducted at the direction of the AL was inadequate and remanded this Appeal to AL to coordinate a new search. Accordingly, the DOE dismissed one of Simpkin's Appeals, and granted Simpkin's other Appeal.

Refund Applications

Hoechst Celanese Chemical, et al., 9/21/95, *RR272–152, et al.*

The DOE considered 13 identical Motions for Reconsideration filed by Philip Kalodner. In those Motions Kalodner requested that the DOE reconsider its prior denial of the crude oil overcharge refund applications filed by his clients. The applications were denied because each firm had signed a waiver of its rights to receive a Subpart V crude oil overcharge refund in order to participate in the Stripper Well Settlement Agreement. Kalodner argued that for equitable reasons the Office of Hearings and Appeals should not consider these waivers to apply to affiliates of the signing firms, even though the waivers plainly state that they are so applicable. The OHA denied the Motion, finding that it would not be proper to disregard the preclusion provisions of the waivers. It pointed out that granting the Motion would overturn a long-established principle of the Subpart V crude oil refund proceeding and intrude upon key principles of the negotiated Stripper Well settlement agreement, as well as upon the authority of Judge Theis, who approved that agreement.

Texaco Inc./Crowley Maritime Corporation, 9/20/95 *RF321–14012*

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding. Crowley Maritime Corporation (Crowley) applied for a refund based upon its estimated Texaco purchase volume figures for the refund period. Crowley estimated its figures by taking each year's dollar expenditures for various Texaco products and dividing them by a national average wholesale price for that year listed in the 1981 Platt's Oil Price Handbook and Oilmanac. After examining Crowley's estimation method, the DOE concluded that it would most likely overstate Crowley's estimated purchase figures. The DOE estimated each of Crowley's yearly purchase volume figures by dividing Crowley's yearly expenditure for each petroleum product by the highest price for the product listed in that year's Platt's Oilmanac. The DOE approved a refund for Crowley totalling $56,189, representing $37,469 in principal plus $18,720 in interest.

Texaco Inc./Hale Brothers, Hale Brothers, Hale Brothers, 9/22/95, *RF321–14012, RF321–21080, RF321–21081*

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Texaco Inc. special refund proceeding. J. Estil Hale (Hale), on behalf of himself and the Estate of Donald Hale, and his sister, Sandra H. Crouch (Crouch), applied for refunds based upon direct Texaco purchases made by Hale Brothers, a partnership which operated a Texaco outlet during the consent order period. In their application, Hale and Crouch stated that Hale Brothers was operated as partnership between Hale, his father C.E. Hale, and his brother, Donald Hale. Subsequently, C.E. Hale and Donald Hale became deceased. The DOE, using Virginia intestate law as a guide, held that Hale, Crouch and the Estate of Donald Hale were the proper parties to receive the refund for the Texaco purchases made by Hale Brothers. The DOE approved refunds for Hale, Crouch and the Estate of Donald Hale totalling $2,219, representing $1,480 in principal plus $739 in interest.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refund Distribution	RB272–51	09/20/95
H&M Lumber Company et al	RF272–90969	09/18/95
Holyoke Coop Association et al	RF272–97559	09/20/95
Texaco Inc./Chronister Oil Company	RF321–20441	09/22/95
Texaco Inc./Sharon Steel Corp.	RF321–15768	09/18/95
Bennie Reid	RF321–16352	
Gallera Gonzales Texaco	RF321–16362	
Texaco Inc./Vaughan Bassett Furniture Corp	RR321–0193	09/21/95
Transcontinental Gas Pipe Line et al	RF272–77230	09/20/95
Webster County et al	RF272–95804	09/22/95
West Coast Truck Lines, Inc.	RF272–78668	09/22/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Farmers Co-op Oil Co.	RF272–94119
Francione's Five Points Texaco	RF321–20669
Merrill Farms	RF272–97416
Midway Texaco Service	RF321–14082
PA Historical & Museum Commission	RF300–21478

Name	Case No.
Taxi Cab of Cincinnati	RF272–97247
Thrall Oil & Chemical	RF321–20653

[FR Doc. 96–23488 Filed 9–12–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of August 28 Through September 1, 1995

During the week of August 28 through September 1, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals

Personnel Security Hearings

Albuquerque Operations Office, 8/30/95, *VSA–0018*

The Director of the Office of Hearings and Appeals issued an Opinion regarding the request for review by an individual of a Hearing Officer's adverse opinion regarding his eligibility for access authorization under the provisions of 10 C.F.R. Part 710. After considering the individual's arguments and the record, the Director found that: (i) the individual's request to be considered for a lower level security clearance and different job were irrelevant to the security clearance review analysis, (ii) the DOE psychiatrist possessed a sufficient basis upon which to evaluate the individual, (iii) the Hearing Officer was correct to consider each of the individual's alcohol-related incidents as significant derogatory information, (iv) the individual was not yet reformed or rehabilitated from his condition of alcohol abuse and (v) interim relief should not be granted. Accordingly, the Director recommended that the individual's access authorization should not be restored.

Rocky Flats Field Office, 9/1/95 *VSO–0032*

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the eligibility for access authorization of an individual who was alleged to have a mental condition of a nature that in the opinion of a board-certified psychiatrist causes a significant defect in her judgment and reliability. The Hearing Officer found that the individual had a personality disorder that did result in a defect in her judgment and gave rise to security concerns. Accordingly, the Hearing Officer found that the individual's request for access authorization should be denied.

Refund Application

Texaco Inc./Ortiz Texaco, 8/28/95 *RR321–180*

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted by Wilson, Keller & Associates, Inc. (WKA) regarding an Application for Refund it submitted on behalf of Ortiz Texaco (OT) in the Texaco Inc., special refund proceeding. In a prior Supplemental Order, the DOE rescinded a portion of the refund granted to Mr. Roberto Torrez Ortiz, owner of OT, because Mr. Ortiz, after receiving a refund for OT's purchases, submitted another application for OT on behalf of a Mr. Colon. The DOE thus concluded that Mr. Ortiz only operated OT during a portion of the time for which he was granted a refund. Pursuant to the Supplemental Order, Mr. Ortiz and his representative, WKA, were made jointly and severally liable for repayment of the overpayment to Mr. Ortiz. In its Motion, WKA states that it paid the entire amount of the overpayment and did not receive any payment from Mr. Ortiz. WKA further argued that the DOE was incorrect in its conclusion that Mr. Ortiz was only eligible for a portion of the refund originally granted him. The DOE held that WKA failed to present any tangible evidence to support its claim that Mr. Ortiz was eligible for the entire refund. Consequently, the DOE denied WKA's Motion for Reconsideration.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

C.E. Zumstein Company, et al	RF272–97945	08/28/95
City of West Chester, et al	RF272–95929	08/31/95
Crude Oil Supplemental Refund Distribution	RB272–46	08/30/95
Crude Oil Supplemental Refund Distribution	RB272–44	08/30/95
Crude Oil Supplemental Refund Distribution	RB272–00047	08/31/95
D.A. Stuart Co., et al	RF272–97902	08/31/95
Gulf Oil Corporation/Buford-Briarwood Gulf, et al	RF300–20281	08/30/95
Milo School Admin. Dist., et al	RF272–97745	08/30/95
Peru, Illinois, et al	RF272–97505	08/30/95
Texaco Inc./City of Elgin, et al	RF321–0103	08/31/95
Texaco Inc./Lonas Construction Co., Inc.	RR321–102	08/31/95
Texaco Inc./P&C Texaco	RF321–8850	08/31/95
Templeton Texaco	RF321–14152	

Dismissals

The following submissions were dismissed:

Name	Case No.
Anderson Pinetruck Pantry	RF300–21588
Boyd Construction Co.	RF272–78159
Boyd Paving Co.	RF272–78158
Busch Industrial Products Corp.	RF304–15162
Corrine Texaco	RF321–9040
E. Saenz Service Station	RF304–15156
Grenada Concrete Products Co.	RF272–78157
Grenada Sand & Gravel	RF272–78156
Mechanics Uniform Rental, Inc.	RF272–97337
Otsego Public Schools	RF272–97944
Oxy USA Inc.	LRO–0003
Resource Dynamics Corp.	VFA–0062
Talco Butane Gas Co.	RF304–15158

[FR Doc. 96–23489 Filed 9–12–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of July 3 Through July 7, 1995

During the week of July 3 through July 7, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 30, 1996.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Personnel Security Hearing

Rocky Flats Field Office, 7/5/95, *VSA–0008*

The Director of the Office of Hearings and Appeals (OHA) issued an opinion under 10 CFR Part 710 concerning the continued eligibility of an individual for access authorization. An OHA Hearing Officer had previously found that the respondent was no longer an alcohol abuser, and therefore had recommended that the respondent's access authorization, which had been suspended, should be reinstated. In response to the DOE Office of Safeguards and Security's Request for Review of the Hearing Officer's Opinion, the OHA Director concluded that there was sufficient evidence in the record to find that the respondent had been a user of alcohol habitually to excess and also had been correctly diagnosed by a board-certified psychiatrist as suffering from alcohol abuse. The Director found, however, that the respondent had presented sufficient evidence of reformation and other factors to mitigate the derogatory information under 10 CFR § 710.8(j). Accordingly, the Director agreed with the Hearing Officer that restoring the respondent's access authorization would not endanger the national security and would be clearly consistent with the national security.

Refund Applications

John Morrell & Co., 7/5/95, *RR272–203*

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by John Morrell & Co. (Morrell) in the Subpart V crude oil refund proceeding. The DOE had dismissed an Application for Refund filed by Morrell in this proceeding as a duplicate of an earlier refund application granted in 1987. In its Motion for Reconsideration, Morrell explained that although both applications were filed from Morrell's Sioux Falls, South Dakota headquarters, the first was based only on fuel consumed at the company's Sioux Falls plant, whereas the later application included fuel purchases made at 20 other locations. Accordingly, Morrell's Motion for Reconsideration was granted.

State Escrow Distribution, 7/5/95, *RF302–16*

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $18,800,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Texaco Inc./Cowart Oil Co., 7/7/95, *RF321–7468*

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. Special refund proceeding. Tri-Co Oil Co., (Tri-Co) applied for a refund based upon direct Texaco purchases made by virtue of the fact that it purchased all of the assets of Cowart. Tri-Co also submitted a copy of the asset purchase agreement it made with Cowart. The DOE held that a mere transfer of assets is not sufficient for it to infer that the parties of an agreement intended to transfer a right of refund. Further, after examining the provisions of the asset purchase agreement, the DOE determined that the agreement did not transfer to Tri-Co whatever right to a refund that Cowart may have had. Consequently, Tri-Co's Application was denied.

Requests for Exception

Central American Petroleum Co., 7/5/95, *VEE–0001*

Central American Petroleum Co. (Central) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' Although Central has not yet participated in the filing of the Form, it argued that the reporting requirement will be too time consuming and onerous. However, the firm failed to demonstrate that it is suffering a financial hardship, medical problems of employees, or any other serious impediment to its operations.

Accordingly, the DOE determined that Central should be denied exception relief.

Sound Oil Company, 7/5/95, *LEE–0152*

Sound Oil Company (Sound) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' Sound asked to be excused from the reporting requirement on the grounds that it has been filing the Form for an unusually long period of time. However, the length of time the firm has been required to file an EIA form does not alone constitute a gross inequity which would warrant exception relief. Accordingly, the DOE determined that Sound should be denied exception relief.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Albuquerque Moving & Storage, Inc. et al	RF272–97300	07/05/95
Bunge Corporation, IN	RC272–304	07/07/95
Bunge Corporation, IL	RC272–305	
Bunge Corporation, LA	RC272–306	
Bunge Corporation, KS	RC272–307	
Conagra Consumer Frozen Food Co.	RC272–302	07/05/95
Consumer Poultry Company	RC272–303	
Crude Oil Supplemental Refund Distribution	RB272–10	07/07/95
Crude Oil Supplemental Refund Distribution	RB272–9	07/07/95
Foreman Industries, Inc. D.I.P	RF272–92037	07/05/95
SPS Technologies, Inc.	RF272–92132	
Border Road Construction Co.	RF272–92290	
Gulf Oil Corporation/Johnston Coca-Cola Bottling Group, Inc. et al	RF300–21441	07/07/95
Intercontinental Branded Appeal et al	RF272–94032	07/05/95
Krum Independent School Dist. et al	RF272–96050	07/05/95
Switzerland County Highway Department	RC272–311	07/07/95
Texaco Inc./Church Street Texaco et al	RF321–19377	07/05/95
Texaco Inc./Cook's Service	RF321–8463	07/05/95
Texaco Inc./Daniels Oil Co., Inc. et al	RF321–8326	07/07/95
Texaco Inc./Marr Texaco et al	RF321–5962	07/05/95
Texaco Inc./McDonald's Texaco	RF321–17110	07/05/95
Texaco Inc./R & R Texaco et al	RF321–7453	07/05/95
Texaco Inc./Robert E. Boyer	RF321–21071	07/05/95
Texaco Inc./Wiser Oil Co. et al	RF321–6540	07/07/95
Wayland School District et al	RF272–80771	07/07/95
Weleetka School District et al	RF272–96026	07/07/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Corsica Cooperative Association	RG272–353
Eastern Aviation Fuels, Inc.	RR272–13
Johnson Oil Co.	RF321–19881
New York University	RF272–92400
Pollard Delivery Service	RF272–89521
State of Vermont—Department of State Buildings	RF272–96554
Top Value Texaco	RF321–16793
United Oil Co.	RF321–19966
White Heavy Haulers, Inc.	RF272–97953

[FR Doc. 96–23490 Filed 9–12–96; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5473–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed September 02, 1996 Through September 06, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960415, Final EIS, COE, CA, US Food and Drug Administration Laboratory, Land Acquisition, Construction and Operation on the North Campus Area at the University of California, Irvine, Orange County, CA, Due: October 07, 1996, Contact: Mr. Alex Watt (213) 452–3860. This EIS was inadvertently omitted from the 9–06–96 Federal Register. The official 30 day NEPA wait period is calculated from 9–06–96.

EIS No. 960416, Final EIS, COE, IL, Delta Coal Mine Complex—West Harrisburg Field, Issuance of Permit for Continue Use of the Illinois No. 6 and No. 7 Coal Mines, Marin, Harrisburg and Saline Counties, IL, Due: October 15, 1996, Contact: Mike Turner (502) 582–6015.

EIS No. 960417, Final EIS, NPS, NM, Pecos National Historical General Management Plan and Development

Concept Plan, Implementation, San Miguel and Santa Fe Counties, NM, Due: October 15, 1996, Contact: Linda L. Stoll (505) 757–6414.

EIS No. 960418, Final EIS, BLM, NV, Lone Tree Gold Mine Expansion Project, Plan of Operations Approval and Permit Issuance, Winnemucca District, Humboldt County, NV, Due: October 15, 1996, Contact: Gerald Moritz (702) 623–1500.

EIS No. 960419, Draft Supplement, FTA, CA, South Sacramento Corridor Transportation Improvements, Union Pacific Railroad Corridor from the 16th Street Station to Meadowview Road, New Information concerning Alternatives Evaluation and the Impacts Assessment Process, Funding and US COE Permit, City and County of Sacramento, CA, Due: October 28, 1996, Contact: Bob Hom (415) 744–3133.

EIS No. 960420, Final EIS, GSA, NV, Las Vegas Federal Building—United States Courthouse Site Selection and Construction, Central Business District, City of Las Vegas, Clark County, NV, Due: October 15, 1996, Contact: John Garvey (415) 522–3489.

EIS No. 960421, Final EIS, COE, VA, VA–168 Battlefield Boulevard South, Construction between Peaceful Road and the North Carolina State Line, Issuance of Permits, VA, Due: October 15, 1996, Contact: Alice Allen-Grimes (757) 441–7219.

EIS No. 960422, Draft Supplement, AFS, WA, Taneum/Peaches Road Access Project, New Information, Construction of I–90 South Access Projects, Plum Creek, North and South Fork Taneum, Cle Elum Ranger District, Kittitas County, WA, Due: October 28, 1996, Contact: Douglas Campbell (509) 674–4411.

EIS No. 960423, Final EIS, AFS, OR, Augusta Timber Sale, Implementation, Willamette National Forest, Blue River Ranger District, Willamette Meridian, Blue River, Lane County, OR, Due: October 15, 1996, Contact: Lynn Burditt (503) 822–3317.

EIS No. 960424, Draft EIS, DOE, WA, Hanford Remedial Action, Implementation, Comprehensive Land-Use Plan, Hanford Site in the Pasco Basin of the Columbia Plateau, WA, Due: November 01, 1996, Contact: Thomas W. Ferns (509) 372–0649.

EIS No. 960425, Draft Supplement, AFS, CO, Stevens Gulch Road Extension and Related Timber Sales, Implementation, New Information and Changed Circumstances Related to the Proposed Action, Grand Mesa, Uncompahgre and Gunnison National Forests, Delta County, CO, Due: October 30, 1996, Contact: Carol McKenzie (970) 874–6618.

Amended Notices

EIS No. 960352, DRAFT EIS, COE, MS, LA, Pearl River in the Vicinity of Walkiah Bluff, Wetland Restoration, Implementation, Picayune, Pearl River County, MS and St. Tammany Parish, LA, Due: October 16, 1996, Contact: Gary Young (601) 631–5960. Published FR 08–02–96—Review Period extended.

Dated: September 10, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–23517 Filed 9–12–96; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Licensee Order To Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM Docket No.
Concord Area Broadcasting.	Concord, CA ...	96–184

(regarding the silent status of Station KRHT(AM))

Pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Concord Area Broadcasting has been directed to show cause why the license for Station KRHT(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

(1) To determine whether Concord Area Broadcasting has the capability and intent to expeditiously resume the broadcast operations of KRHT(AM), consistent with the Commission's Rules.

(2) To determine whether Concord Area Broadcasting has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Concord Area Broadcasting is qualified to be and remain the licensee of Station KRHT(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–23478 Filed 9–12–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order To Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/State	MM Docket No.
Evergreen Media Corporation.	Tremonton, Utah.	96–182

(regarding the silent status of Station KNFL(AM))

Pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Evergreen Media Corporation has been directed to show cause why the license for Station KNFL(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

(1) To determine whether Evergreen Media Corporation has the capability and intent to expeditiously resume the broadcast operations of KNFL(AM), consistent with the Commission's Rules.

(2) To determine whether Evergreen Media Corporation has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Evergreen Media Corporation is qualified to be and remain the licensee of Station KNFL(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–23479 Filed 9–12–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order To Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/State	MM Docket No.
Missouri Valley Productions, Inc.	Anamosa, Iowa	96–183

(regarding the silent status of Station KLEH(AM))

Pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Missouri Valley Productions, Inc. has been directed to show cause why the license for Station KLEH(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

(1) To determine whether Missouri Valley Productions, Inc. has the capability and intent to expeditiously resume the broadcast operations of KLEH(AM), consistent with the Commission's Rules.

(2) To determine whether Missouri Valley Productions, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Missouri Valley Productions, Inc. is qualified to be and remain the licensee of Station KLEH(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–23477 Filed 9–12–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 47130, September 6, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, September 11, 1996.

CHANGES IN THE MEETING: The Open Meeting Has Been Canceled, and the Scheduled Item Was Handled Via Notation Voting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 11, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23637 Filed 9–11–96; 12:03 pm]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 3:45 p.m., Wednesday, September 18, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 11, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23660 Filed 9–11–96; 1:55 pm]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 2:30 p.m., Wednesday, September 18, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to Regulation M (Consumer Leasing) (proposed earlier for public comment; Docket No. R–0892).

2. Proposed status report to the Congress pursuant to section 303(a)(3) of the Community Development and Regulatory Improvement Act of 1994 concerning the Federal Reserve's efforts to streamline its regulatory requirements.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 11, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23661 Filed 9–11–96; 1:55 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Agency for Health Care Policy and Research, DHHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) review of a proposed data collection project. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3507(a)(1)(D)), the AHCPR invites the

public to comment on this proposed information collection.

DATES: Comments on this notice must be received by October 15, 1996.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB; New Executive Office Building, Room 10235, Washington, DC 20503.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Carole Dillard, AHCPR Reports Clearance Officer, (301) 594–1357.

SUPPLEMENTARY INFORMATION: Proposed Project: Assessment of decisionmaking tools for minority and underserved workers and their families.

The purpose of the project is to develop and test a print guide and video for low literacy, low socioeconomic or ethnic minority persons, including Medicaid recipients, to help them choose a health plan. The purpose of the proposed data collection will be to systematically assess user reaction to the materials, including perceptions of the benefits and limitations of the materials. The burden estimates are:

Consumer

No. of respondents: 150.
No. of surveys per respondent: 1.
Average burden/response: .33 hours.
Estimated total burden/response: 50 hours.

Copies of these data collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above for details).

Dated: September 9, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–23485 Filed 9–12–96; 8:45 am]

BILLING CODE 4160–90–M

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Revised Promulgation for Fiscal Year 1997

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of revised allocation of title XX—social services block grant allotments for Fiscal Year 1997.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1997, pursuant to title XX of the Social Security Act, as amended (Act). This revision is required by the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996'', which decreases the authorization for title XX to $2.380 billion.

FOR FURTHER INFORMATION CONTACT: Frank A. Burns, (202) 401–5536.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1997, the allotments are based upon the Bureau of Census population statistics contained in its reports ''Updated National/State Population Estimates'' (CB95–39 Table 1) released March 1, 1995, and ''1990 Census of Population and Housing'' (CPH–6–AS and CPH–6–CNMI) published April 1992, which was the most recent data available from the Department of Commerce at the time of the Department's initial promulgation.

EFFECTIVE DATE: The allotments are effective October 1, 1996.

FISCAL YEAR 1997 FEDERAL ALLOTMENTS TO STATES FOR SOCIALSERVICES—TITLE XX BLOCK GRANTS

	Initial FY 97 Allotment	Revised FY 97 Allotment
TOTAL	$2,800,000,000	$2,380,000,000
ALABAMA	45,122,270	38,353,930
ALASKA	6,481,179	5,509,002
AMERICAN SAMOA	104,188	88,560
ARIZONA	43,582,187	37,044,859
ARKANSAS	26,234,873	22,299,642
CALIFORNIA	336,155,028	285,731,774
COLORADO	39,100,976	33,235,830
CONNECTICUT	35,026,175	29,772,249
DELAWARE	7,550,681	6,418,079
DIST. OF COL.	6,096,159	5,181,735
FLORIDA	149,227,549	126,843,417
GEORGIA	75,453,333	64,135,333
GUAM	482,759	410,345
HAWAII	12,609,423	10,718,010
IDAHO	12,117,452	10,299,834
ILLINOIS	125,687,820	106,834,647
INDIANA	61,517,728	52,290,069
IOWA	30,256,198	25,717,768
KANSAS	27,315,069	23,217,809
KENTUCKY	40,929,824	34,790,350
LOUISIANA	46,148,991	39,226,642
MAINE	13,261,819	11,272,546
MARYLAND	53,539,247	45,508,360
MASSACHUSETTS	64,608,588	54,917,300
MICHIGAN	101,559,865	86,325,885
MINNESOTA	48,844,135	41,517,515
MISSISSIPPI	28,544,996	24,263,247
MISSOURI	56,448,291	47,981,047
MONTANA	9,154,933	7,781,693
NEBRASKA	17,358,010	14,754,309
NEVADA	15,582,637	13,245,241
NEW HAMPSHIRE	12,160,232	10,336,197
NEW JERSEY	84,533,401	71,853,391
NEW MEXICO	17,689,555	15,036,122
NEW YORK	194,317,733	165,170,073

FISCAL YEAR 1997 FEDERAL ALLOTMENTS TO STATES FOR SOCIALSERVICES—TITLE XX BLOCK GRANTS—Continued

	Initial FY 97 Allotment	Revised FY 97 Allotment
NORTH CAROLINA	75,613,758	64,271,694
NORTH DAKOTA	6,823,420	5,799,907
NO. MARIANA ISLANDS	96,552	82,069
OHIO	118,736,060	100,925,651
OKLAHOMA	34,844,360	29,617,706
OREGON	33,004,817	28,054,094
PENNSYLVANIA	128,896,325	109,561,876
PUERTO RICO	14,482,759	12,310,345
RHODE ISLAND	10,662,930	9,063,490
SOUTH CAROLINA	39,186,536	33,308,556
SOUTH DAKOTA	7,711,106	6,554,440
TENNESSEE	55,346,704	47,044,698
TEXAS	196,552,992	167,070,043
UTAH	20,406,089	17,345,176
VERMONT	6,203,109	5,272,643
VIRGIN ISLANDS	482,759	410,345
VIRGINIA	70,073,740	59,562,679
WASHINGTON	57,143,467	48,571,947
WEST VIRGINIA	19,486,318	16,563,370
WISCONSIN	54,352,068	46,199,258
WYOMING	5,090,827	4,327,203

Dated: September 9, 1996.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 96–23472 Filed 9–12–96; 8:45 am]

BILLING CODE 4184–01–P

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Center for Research Resources Initial Review Group for October 1996. These meetings will be open to the public as indicated below, to discuss program planning; program accomplishments; administrative matters such as previous meeting minutes; the report of the Director, National Center for Research Resources (NCRR); review of budget and legislative updates; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide summaries of meetings and rosters of committee members. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed below, in advance of the meeting.

Name of Committee: National Center for Research Resources Initial Review Group—General Clinical Research Centers Review Committee.

Dates of Meeting: October 17–18, 1996.

Place of Meeting: Holiday Inn, Pallidian Center Conference Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815, (301) 658–1500.

Open: October 17, 8:00 a.m.–9:30 a.m.

Closed: October 17, 9:30 a.m.–until adjournment.

Scientific Review Administrator: Dr. Charles Hollingsworth, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0818.

Name of Committee: National Center for Research Resources Initial Review Group—Comparative Medicine Review Committee.

Date of Meeting: October 27–29, 1996.

Place of Meeting: The Bethesda Ramada, Embassy III, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654–1000.

Closed: October 27, 6:30 p.m.–until recess.

Open: October 28, 8:30 a.m.–10:00 a.m.

Closed: October 28, 10:00 a.m.–until adjournment.

Scientific Review Administrator: Dr. Raymond O'Neill, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0820.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research, National Institutes of Health)

Dated: September 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23430 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; 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 Initial Review Group (IRG) meeting:

Name of IRG: Clinical Trials Review Committee.

Date: October 27–29, 1996.

Time: 7:00 p.m.

Place: Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. Joyce A. Hunter, 6701 Rockledge Drive, Rm. 7192, MSC 7924, Bethesda, Maryland 20892, (301) 435–0287.

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 the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23425 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, October 24–25, 1996, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on October 24 from 8:30 a.m. to approximately 3:00 p.m. for discussion of program policies and issues. Attendance by the public is 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., sec. 10(d) of Public Law 92–463, the Council meeting will be closed to the public from approximately 3:00 p.m. to recess on October 24 and from 8:30 a.m. to adjournment on October 25 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program 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 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23431 Filed 9–14–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: September 13, 1996.

Time: 1:00–3:00 p.m.

Place: 6120 Executive Blvd., Rockville, MD 20892, (telephone conference call).

Contact Person: Craig A. Jordan, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8693.

Purpose/Agenda: To review and evaluate grant applications. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion 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 could constitute a clearly unwarranted invasion of personal privacy.

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 Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: September 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23421 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting of the National Deafness and Other Communication Disorders Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a special meeting of the National Deafness and Other Communication Disorders Advisory Council on September 20, 1996, at the National Institutes of Health, Building 31, Room 3C05, 9000 Rockville Pike, Bethesda, Maryland.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and Section 10(d) of Public Law 92–463, the meeting, which will be conducted as a telephone conference call, will be closed to the public from 1 pm to adjournment. The meeting will include the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the meeting may be obtained from Dr. Craig A. Jordan, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MSC 7180, Bethesda, Maryland 20892, 301–496–8693. A summary of the meeting and rosters of the members may also be obtained from his office.

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 Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: September 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23422 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 19(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: Preclinical Evaluation of Therapies of Mycobacterium Avium Infection (Telephone Conference Call).

Date: September 10, 1996.

Time: 11:00 a.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Rm. 4C04, Bethesda, MD 20892–7610, (301) 496–8206.

Contact Person: Dr. Vassil Georgiev, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C04, Bethesda, MD 20892–7610.

Purpose/Agenda: To evaluate contract proposals.

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 above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: September 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23423 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on October 9–11, 1996, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and the meeting of the subcommittee will be in Conference Room 7, Building 31C.

The meeting of the Planning Subcommittee will be open to the public on October 9 from 2 pm until 3 pm for the discussion of policy issues. The meeting of the full Council will be open to the public on October 10 from 8:30 am until 4:30 pm for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders and on October 11 from 8:30 am until approximately 10:00 am for a report on extramural programs of the Division of Human Communication. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and Section 10(d) of Public Law 92–463, the meeting of the Planning Subcommittee on October 9 will be closed to the public from 3 pm to adjournment. The meeting of the full Council will be closed to the public on October 10 from 4:30 pm to 5 pm and on October 11 from approximately 10 am until adjournment. The meetings will include the review, discussion, and evaluation of individual grant applications and a report on the Division of Intramural Research. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meeting may be obtained from Dr. Craig A. Jordan, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MSC7180, Bethesda, Maryland 20892, 301–496–8693. A summary of the meeting and rosters of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Jordan at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23426 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders on October 17, 1996. The meeting will be held as a telephone conference call emanating from Room 3C05, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 1 to 2 pm to present reports and discuss issues related to the business of the Board. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public from 2 pm to adjournment at approximately 2:30 pm. The closed portion of the meeting will be for the review and discussion of the recent evaluation of research programs within the Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster or members may be obtained from James F. Battey, M.D., Ph.D., Executive Secretary of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B–28, Rockville, Maryland 20850, 301–402–2829. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please

contact Dr. Battey at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23427 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 11, 1996.

Time: 8:30 a.m.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 11, 1996.

Time: 9 a.m.

Place: Hampshire Hotel, 1310 New Hampshire Ave., N.W., Washington, DC 20036.

Contact Person: Maureen L. Eister, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: September 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23428 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of a Meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Council

Notice is hereby given of the meeting of the Research Priorities Subcommittee of the National Deafness and Other Communication Disorders Advisory Council on October 22, 1996. The meeting will take place from 1 to 3:30 pm as a telephone conference call in Conference Room 7, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which is open to the public, will be held to discuss new research priorities in the areas of deafness and communication disorders. Attendance by the public is limited to space available.

A summary of the meeting and a roster of members may be obtained from Dr. Craig A. Jordan, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd. MSC 7180, Bethesda, Maryland 20892, 301–496–8693, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Jordan in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23429 Filed 9–12–96; 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 7, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 6172, Telephone Conference.

Contact Person: Dr. Dennis Leszcynski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1044.

Name of SEP: Multidisciplinary Sciences.

Date: October 13–14, 1996.

Time: 6:00 p.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Chemistry and Related Sciences.

Date: October 16, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Silver Spring, MD.

Contact Person: Dr. Chhandra Ganguly, Scientific Review Administrator, 6701 Rockledge Drive, Room 5156, Bethesda, Maryland 20892, (301) 435–1739.

Name of SEP: Behavioral and Neurosciences.

Date: November 7, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Carl Banner, Scientific Review Administrator, 6701 Rockledge Drive, Room 5182, Bethesda, Maryland 20892, (301) 435–1251.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Chemistry and Related Sciences.

Date: September 30, 1996.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Multidisciplinary Sciences.

Date: November 7–9, 1996.

Time: 6:30 p.m.

Place: University Plaza Hotel, Seattle, WA.

Contact Person: Dr. Bill Bunnage, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.

Date: November 18–20, 1996.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

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 6, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23432 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Pharmaceuticals for the Treatment of Autoimmune Disease and Transplant Rejection

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a worldwide, limited field of use, exclusive license to practice the inventions embodied in the patents and patent applications referred to below to Sentron Medical, Inc. of Cincinnati, Ohio. The patent rights in these inventions have been assigned to the Government of the United States of America. The patents and patent applications to be licensed are:

(1) Method of Treating Autoimmune Diseases and Transplantation Rejection
U.S. Patent Application Serial No. 08/073,830
Filing Date: 6/07/93

(2) Method of Treating Autoimmune Diseases and Transplantation Rejection
U.S. Patent Application Serial No. 08/480,525
Filing Date: 06/07/95

(3) Method of Treating Autoimmune Diseases and Transplantation Rejection
U.S. Patent Application Serial No. 08/464,130
Filing Date: 06/05/95

(4) Method of Treating Autoimmune Diseases and Transplantation Rejection
U.S. Patent Application Serial No. 08/462,165
Filing Date: 06/05/95

(5) Method of Treating Autoimmune Diseases and Transplantation Rejection
U.S. Patent Application Serial No. 08/460,886
Filing Date: 06/05/95

(6) Methods for Assessing the Ability of a Candidate Drug To Suppress MHC Class 1 Expression
U.S. Patent Application Serial No. 08/503,525
Filing Date: 08/21/95

The patents and patent applications to be licensed include those noted above, and all continuation applications, divisional applications, continuation-in-part applications, and foreign counterpart applications of these patents and patent applications.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to: Carol C. Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852; Telephone: (301) 496–7056, ext. 287; Facsimile: (301) 402–0220. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before November 12, 1996, will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending patent application.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

SUPPLEMENTARY INFORMATION: The subject technology provides methods for treating autoimmune diseases in mammals and for preventing or treating transplantation rejection in a transplant recipient. The methods of treatment involve the use of drugs capable of suppressing expression of MHC Class I molecules. In particular, the use of the drug methimazole to suppress expression of MHC Class I molecules in the treatment of autoimmune diseases and the prevention or treatment of rejection in a transplant recipient is disclosed. In addition, *in vivo* and *in vitro* assays are provided for the assessment and development of drugs capable of suppressing MHC Class I molecules.

Although organ transplantation is an established therapy in the United States, there remain major clinical and practical obstacles which continue to limit the use of transplantation. The number of transplants currently performed dramatically understates the size of the opportunity for transplantation should these obstacles be overcome. In addition to the over 15,000 organ transplants that were performed in the U.S. in 1990, another 20,000–25,000 patients are on nationwide organ specific waiting lists because of organ shortages. New technologies which may enable the use of cells, organ segments, or non-human donors will make transplants possible for more of the patients on waiting lists.

Dated: September 4, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–23424 Filed 9–12–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–03]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies

regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brain Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fisher Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or writer a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address: GSA: Mr. Brain K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; Interior: Ms. Lola D. Knight, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; Transportation: Mr. Crawford F. Grigg, Director, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: September 6, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program
Federal Register Report for 09/13/96

Suitable/Available Properties

Buildings (by State)

Maryland

Shoemaker Property
NPS Tract 405–45
Boonsboro Co: Washington MD 21713–
Landholding Agency: Interior
Property Number: 619620003
Status: Unutilized
Comment: 816 sq. ft., needs rehab, most recent use—residential, off-site use only.

North Carolina

Bunk House
Great Smoky Mountains National Park
Fontana Dam Co: Swain NC 28733–
Landholding Agency: Interior
Property Number: 619620004
Status: Unutilized
Comment: 450 sq. ft., most recent use—residential, off-site use only.

Land (by State)

Oregon

1–C Drain Right-of-Way
Klamath Project
Klamath Falls Co: Klamath OR 97603–
Landholding Agency: Interior
Property Number: 619620002
Status: Unutilized
Comment: 0.51 acres, narrow strip of land.

Tennessee

Former Pumping Facility
Portion of Volunteer Army Ammunition Plant
Chickamauga Lake
Chattanooga Co: Hamilton TN 37402–
Landholding Agency: GSA
Property Number: 549630004
Status: Excess
Comment: 10.83 acres w/inactive pumping station, previously published as 219520031, 219013791, 219013880
GSA Number: 4–D–TN–594C.

Suitable/Unavailable Properties

Buildings (by State)

California

Brown House 07–129
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520030
Status: Excess
Comment: 1 story wood frame residence, off-site removal only.

Crist House 07–130
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520031
Status: Excess
Comment: 1269 sq. ft., 1 story wood frame residence, off-site removal only, need repairs.

Dunkley House 07–127
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520032
Status: Excess
Comment: 1269 sq. ft., 1 story wood frame residence, need repairs, off-site removal only.

Graton House 07–125
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520033
Status: Excess
Comment: 1665 sq. ft., 1 story wood frame residence, need repairs, off-site removal only.

Schach House 07–105
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520034
Status: Excess
Comment: 700 sq. ft., 1 story wood frame residence, off-site removal only, need repairs.

Young House 07–132
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520035
Status: Excess
Comment: 1442 sq. ft., 1 story wood frame residence, off-site removal only.

New Mexico

Hornkohl Property

Petroglyph National Monument
Albuquerque Co: Bernalillo NM 87120–
Landholding Agency: Interior
Property Number: 619510001
Status: Excess
Comment: 1-story wood frame residence, needs rehab, off-site use only.

Virginia

NPS Tract 422–25
Former White Property
County Rd. 602 on Moore Run near 4–H Camp
Front Royal Co: Warren VA 22630–
Landholding Agency: Interior
Property Number: 619440002
Status: Excess
Comment: 864 sq. ft., 2-story frame residence, w/Natl. Appalachian Trails System Act, off-site use only.

Land (by State)

Arizona

Tract No. APO–SRP–4B–5
Mesa Co: Maricopa AZ 85213–
Location: 2000' south of Thomas Road at Val Vista Drive
Landholding Agency: Interior
Property Number: 619410005
Status: Unutilized
Comment: 0.57 acre; 20 foot strip of land which is 1,026 ft. long.

Quartermaster Depot
4th Avenue and Colorado River
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619420001
Status: Unutilized
Comment: Less than 1 acre, dirt and shrubbery along the river, lease restrictions, historical site.

ACDC Tract No. T–71A
Along the Arizona Canal
Glendale Co: Maricopa AZ 85306–
Landholding Agency: Interior
Property Number: 619530001
Status: Excess
Comment: 3.15 acres.

Tract No. OSG–1–23
Near McDowell Road & Bush Hwy.
Mesa Co: Maricopa AZ 85207–
Landholding Agency: Interior
Property Number: 619530012
Status: Excess
Comment: 0.29 acres, located next to private land owner, limited access.

California

Folsom South Canal
SW corner of Whiterock Rd. & Folsom S Canal
Rancho Cordova Co: Sacramento CA 95670–
Landholding Agency: Interior
Property Number: 619310002
Status: Excess
Comment: 1.52 acres; perpetual easement over .25 acre, surrounding land use in commercial.

Suitable/To Be Excessed

Buildings (by State)

Washington

Quarters No. 1204
604 S. Maple
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330001
Status: Excess
Comment: 850 sq. ft., one story frame residence, asbestos siding.

Quarters No. 1208
608 S. Maple
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330002
Status: Excess
Comment: 709 sq. ft., one story frame residence, asbestos siding.

Quarters No. 1301
3 SE and N Warden Road
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330003
Status: Excess
Comment: 709 sq. ft., one story frame residence, on 4.9 acres, asbestos siding.

Unsuitable Properties

Buildings (by State)

Arizona

Inn Cabin #9
North Rim Grand Canyon
Grand Canyon Co: Conconino AZ 86023–
Landholding Agency: Interior
Property Number: 619530013
Status: Unutilized
Reason: Extensive deterioration.

California

Rode
13650 Ocean View Terrace
Klamath Co: Del Norte CA 95548–
Landholding Agency: Interior
Property Number: 619620005
Status: Unutilized
Reason: Extensive deterioration.

Carter, Paul Cabin
Klamath Beach Road
Klamath Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619620006
Status: Unutilized
Reason: Extensive deterioration.

Wood Sheds—Pinewood
Sequoia National Park Co: Three Rivers CA 93271–
Landholding Agency: Interior
Property Number: 619630011
Status: Unutilized
Comment: Extensive deterioration.

Reason: Extensive detoriation
Office—Pinewood
Sequoia National Park Co: Three Rivers CA 93271–
Landholding Agency: Interior
Property Number: 619630012
Status: Unutilized
Reason: Extensive deterioration.

Trailer—Pinewood
Sequoia National Park Co: Three Rivers CA 93271–
Landholding Agency: Interior
Property Number: 619630013
Status: Unutilized
Reason: Extensive deterioration.

Pinewood Cabins, 570–577, 579
Sequoia National Park Co: Three Rivers CA 93271–
Landholding Agency: Interior
Property Number: 619630014
Status: Unutilized
Reason: Extensive deterioration.

Pinewood Cabins
Sequoia National Park Co: Three Rivers CA 93271–
Location: 501–507, 578, 580–583, 509, 510, 512, 514–557, 559–564, 566, 567, 569
Landholding Agency: Interior
Property Number: 619630015
Status: Unutilized
Reason: Extensive deterioration.

Maryland

Upper Waldorf Field Site
Rt. 228—Bensville Rd.
Waldorf Co: Charles MD 20601–
Landholding Agency: GSA
Property Number: 549630013
Status: Excess
Reason: Extensive deterioration
GSA Number: 4–N–MD–0587.

Montana

Barn/Garage
316 N. 26th Street
Billings Co: Yellowstone MT
Landholding Agency: Interior
Property Number: 619520022
Status: Excess
Reason: Extensive deterioration.

New York

Bldg. 9
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879630027
Status: Excess
Reason: Secured Area.

Bldg. 10
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879630028
Status: Excess
Reason: Secured Area.

Oregon

Bldg. 0210
500 Nevada Street
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 619540002
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 0211
500 Nevada Street
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 619540003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 0213
500 Nevada Street
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 619540004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 0214
500 Nevada Street
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 619540005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 0510
Wilson Dam Residence
Klamath Falls Co: Klamath OR 97601–
Landholding Agency: Interior
Property Number: 619540006
Status: Unutilized
Reason: Extensive deterioration.

Mooring/Boathouse
Station Chetco River
Brookings Co: Curry OR 97415–
Landholding Agency: DOT
Property Number: 879630026
Status: Excess
Reason: Floodway.

Texas

Tract 112–14
Big Thicket National Preserve
Livingston Co: Polk TX 77351–
Landholding Agency: Interior
Property Number: 619630008
Status: Unutilized
Reason: Extensive deterioration.

Tract 112–22
Big Thicket National Preserve
Livingston Co: Polk TX 77351–
Landholding Agency: Interior
Property Number: 619630009
Status: Unutilized
Reason: Extensive deterioration.

Tract 158–51
Big Thicket National Preserve
Saratoga Co: Hardin TX
Landholding Agency: Interior
Property Number: 619630010
Status: Unutilized
Reason: Extensive deterioration.

Vermont

Happy Hill Cabin
NPS Tract 202–08
Norwich Co: Windsor VT 05055–
Landholding Agency: Interior
Property Number: 619620007
Status: Unutilized
Reason: Extensive deterioration.

Land (by State)

Arizona

Santa Fe Pacific Pipelines
Avenue 7E North from Hwy. 95
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619420003
Status: Unutilized
Reason: Secured Area.

Ed Bull Land
Northeast corner of Price & Galveston
Chandler Co: Maricopa AZ 85224–
Landholding Agency: Interior
Property Number: 619530011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Case No. 95–019-Surplus Land
Dale Anderson (Farnsworth)
Mesa Co: Maricopa AZ 85220–
Landholding Agency: Interior
Property Number: 619610001
Status: Excess
Reason: Other
Comment: inaccessible.

ARCO Surplus Land
20-foot strip, 53rd Ave.
Phoenix Co: Maricopa AZ 85043–
Landholding Agency: Interior
Property Number: 619620001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Oregon

Cherry Creek Property Disposal
1.56 acres of land
Madras Co: Jefferson OR 97741–
Landholding Agency: Interior
Property Number: 619620008
Status: Unutilized
Reason: Within airport runway clear zone.

[FR Doc. 96–23257 Filed 9–12–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Conservation Agreements for the Bonneville Cutthroat Trout and the Colorado River Cutthroat Trout for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of two Draft Conservation Agreements, one for the Bonneville cutthroat trout (*Onchornychus clarki utah*) in the State of Utah and one for the Colorado River cutthroat trout (Onchornychus clarki pleuriticus) in the State of Utah. Both of these species are designated species of special concern by the Service and within the State of Utah. The Conservation Agreements were developed by the Utah Department of Natural Resources, as a collaborative and cooperative effort among resource agencies. Both agreements focus on reducing and eliminating significant threats to the species that warrant their special status, and on restoring and maintaining populations of each species to ensure their longterm conservation within their respective historical ranges. The Service solicits review and comment from the public on these draft agreements.

DATES: Comments on the Draft Conservation Agreements must be received on or before October 15, 1996 to be considered by the Service during preparation of the final Conservation Agreements and prior to the Service's determination whether it will be a signatory party to the agreements.

ADDRESSES: Persons wishing to review the Draft Conservation Agreements may obtain a copy by contacting the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written comments and materials regarding the Draft Conservation Agreements also should be directed to the same address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Williams, Assistant Field Supervisor (see **ADDRESSES** section) (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

The Bonneville cutthroat trout is a subspecies of cutthroat trout native to the Bonneville Basin of Utah, Nevada, Idaho, and Wyoming. The desiccation of ancient Lake Bonneville restricted Bonneville cutthroat trout to headwater streams and lakes within the Basin. Human activities such as water development, agricultural development, energy development, mining, timber harvesting, grazing, overfishing, and the introduction of nonnative species have impacted Bonneville cutthroat trout populations. The tenuous status of the remaining populations and the habitat has led to conservation efforts at the Federal, State, and local level. The Utah Department of Natural Resources initiated development of a Conservation Agreement for the Bonneville cutthroat trout in 1995, working cooperatively with other agencies, in an effort to ensure the longterm conservation of Bonneville cutthroat trout within its historical range in Utah.

The Colorado River cutthroat trout is a subspecies of cutthroat trout native to the upper Colorado River drainage in Utah, Colorado, Wyoming, and Arizona. Current distribution of the subspecies is restricted to headwater drainages of the Colorado River above the Grand Canyon. Human activities such as water development, agricultural activities, energy development, mining, overfishing, and the introduction of nonnative species have impacted Colorado River cutthroat trout populations. The tenuous status of the remaining populations and the habitat has led to conservation efforts at the Federal, State, and local level. The Utah Department of Natural Resources initiated development of a Conservation Agreement for the Colorado River cutthroat trout in 1995, working cooperatively with other agencies, in an effort to ensure the longterm conservation of Colorado River cutthroat trout within its historical range in Utah.

The Conservation Agreements for both subspecies of cutthroat trout

outline seven general management actions and four general administrative actions required to meet the objectives of the agreements. These actions include—determining baseline Bonneville and Colorado River cutthroat population, life history, and habitat data; determining and maintaining genetic integrity; enhancing and maintaining habitat; selectively controlling nonnative species; expanding populations and range through introductions or reintroductions; monitoring populations and habitat; and developing a mitigation protocol for proposed water development and future habitat alteration, where needed; coordinating conservation activities, implementing the conservation schedule; funding conservation actions; and assessing conservation progress.

Public Comments Solicited

The Service will use information received in its determination as to whether it should be a signatory party to the agreements. Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the draft documents are hereby solicited. All comments and materials received will be considered prior to the approval of any final document.

Author

The primary author of this notice is Janet Mizzi (see **ADDRESSES** section) (telephone 801/524–5001).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Act of 1956, the Fish and Wildlife Service Coordination Act of 1964, and the National Memorandum of Understanding (94 (SMU–058)).

Dated: September 6, 1996.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 96–23476 Filed 9–12–96; 8:45 am]

BILLING CODE 4310–55–M

Silvio Conte National Fish and Wildlife Refuge Advisory Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of The Federal Advisory Committee Act, this notice announces a meeting of the Silvio O. Conte National Fish and Wildlife Refuge Advisory Committee established under the authority of The Silvio O. Conte National Fish and Wildlife Refugee Act.

DATES: The Silvio O. Conte National Fish and Wildlife Refuge Advisory Committee will meet from 10:00 a.m. to 2:00 p.m., Wednesday, Oct. 23, 1996.

ADDRESSES: The meeting will be held in the auditorium of the Regional Office of the U.S. Fish and Wildlife Service, Hadley, MA.

Summary minutes of the meeting will be maintained in the office of the Coordinator for the Silvio Conte National Fish and Wildlife Refuge Advisory Committee at 38 Avenue A, Turners Falls, MA 01376.

FOR FURTHER INFORMATION CONTACT: Committee Coordinator Lawrence Bandolin at 413–863–0209, FAX 413–863–3070.

SUPPLEMENTARY INFORMATION: Committee members will be updated on refuge activities and the results of the Challenge Cost Share program. There will also be discussion of the continuing role of the Committee.

The meetings are open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration. Summary minutes of the meeting will be available for public inspection during regular business hours 8:30–4:30 p.m.) Monday through Friday within 30 days following the meeting at the committee coordinator's office listed above. Personal copies may be purchased for the cost of duplication.

Dated: September 4, 1996.

Ronald Lambertson,

Regional Director, Region 5, Hadley, Massachusetts.

[FR Doc. 96–23433 Filed 9–12–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[OR–030–06–1220–00: GP6–0255]

Notice of Meeting of Southeastern Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held October 21, 1996 from 8:00 a.m. to 9:00 p.m. and October 22, 1996 from 8:00 a.m. to 12:00 noon at the Harney County Museum Club Room, 18 West ''D'' Street, Burns, Oregon.

At an appropriate time, the council will recess for approximately one hour for lunch and one and one-half hours for dinner. Public comments will be received from 7:00 p.m. to 7:30 p.m., October 21, 1996. Topics to be discussed during the meeting are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Project.

Notice is given that the meeting of the Southeastern Oregon Resource Advisory Council previously announced for September 19 from 1:00 p.m. to 9:00 p.m. and September 20, 1996 from 8:00 a.m. to 12:00 noon at the Harney County Museum Club Room 18 West ''D'' Street, Burns, Oregon has been canceled.

Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held January 27, 1997 from 8:00 a.m. to 9:00 p.m. and January 28, 1997 from 8:00 a.m. to 12:00 noon at the Holiday Inn/Country Kitchen, 1249 Tapadera Avenue, Ontario, Oregon.

At an appropriate time, the council will recess for approximately one hour for lunch and one and one-half hours for dinner. Public comments will be received from 7:00 p.m. to 7:30 p.m., January 27, 1997. Topics to be discussed during the meeting are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Project.

DATES: The Southeastern Oregon Resource Advisory Council meeting will begin at 8:00 a.m. and run to 9:00 p.m. October 21, and, 8:00 a.m. to 12:00 noon on October 22, 1996.

The Southeastern Oregon Resource Advisory Council meeting will begin at 8:00 a.m. and run to 9:00 p.m. January 27, 1997, and, 8:00 a.m. to 12:00 noon on January 28, 1997.

ADDRESSES: The Southeastern Oregon Resource Advisory Council meeting will take place in the Harney County Museum Club Room, 18 West ''D'' Street, Burns, Oregon.

The Southeastern Oregon Resource Advisory Council meeting will take place in the Holiday Inn/Country Kitchen, 1249 Tapadera Avenue, Ontario, Oregon.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 541 473–3144).

Geoffrey B. Middaugh,

Associate District Manager.

[FR Doc. 96–23435 Filed 9–12–96; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Alaska Outer Continental Shelf Region, Beaufort Sea Natural Gas and Oil Lease Sale 144

AGENCY: Minerals Management Service, Interior.

ACTION: Technical Corrections to Final Notice of Sale.

SUMMARY: This Notice corrects errors in the Final Notice of Sale for Alaska Outer Continental Shelf Region, Beaufort Sea Natural Gas and Oil Lease Sale 144. In Notice document 96–20863, beginning on page 46282 in the issue of August 16, 1996, the following corrections are made:

On page 42682, paragraph 3, the second sentence is corrected to read ''The sealed envelope and the bid should contain the following information; the company name, MMS qualification number, map number and name (abbreviations acceptable), and the block number of the block bid upon.''

On page 42683, paragraph 5, the last sentence is corrected to read ''See paragraph 14(t).''

On page 42692,under DISPUTED BIDDING UNITS of the continued listing for Official Protraction Diagram NR 06–03, Beechey Point (approved February 1, 1996), the first Bidding Unit listed at the top of the second portion of the page, as listed below, should be deleted:

Blocks	Hectares	Total hectares
6668 Area E 6669 Area D	62.970317 D 47.853006 D	110.823323 D

On page 42693, under SPLIT BLOCKS of the continued listing for Official Protraction Diagram NR 06–04, Flaxman Island (approved February 1, 1996), the following hectare amounts are corrected for the following SPLIT BLOCKS:

Blocks Hectares

6804 Area B 1124.318130, and

6805 Area B 1250.376133

Corrected OCS Composite Block Diagrams for these blocks are available from the Minerals Management Service, Alaska OCS Region, 949 E. 36th Avenue (Third Floor), Anchorage, Alaska 99508–4302.

On page 42699, under Eastern Fall Migration, August 1 through October 31, delete all blocks listed for OPD's NR 07–04, Mackenzie Canyon North; NR 07–05, Demarcation Point; and NR 07–06, Mackenzie Canyon.

Dated: September 9, 1996.

Lucy R. Querques,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 96–23510 Filed 9–12–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Clean Water Act

In accordance with departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that a consent decree in *United States of America* versus *Frederick T. Cline et al.*, No. C 96–0760 EFL (N.D. Cal.), was lodged with the United States District Court for the Northern District of California on September 5, 1996. The proposed decree concerns alleged violations of sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1344, and section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 4023, as a result of the discharge of dredged and fill materials into wetlands located in Sonoma County, California by Frederic Cline and Cline Cellars, Inc (''Cline'').

The Consent Decree provides for restoration of the wetlands in accord with a restoration plan approved by the United States Army Corps of Engineers and payment of a $20,000.00 civil penalty to the United States.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Sylvia Quast, Trail Attorney, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States of America* versus *Frederick T. Cline et al.*, DJ Reference No. 90–5–1–6–623.

The proposed consent decree may be examined at the Offices of the United States Attorney for the Northern District of California, 450 Golden Gate Avenue, Tenth Floor, San Francisco, California 94102; and the office of District Counsel, United States Army Corps of Engineers, San Francisco District, 333 Market Street, Suite 804, San Francisco, California 94105, (415) 977–8644.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 96–23529 Filed 9–12–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Merck & Co., Inc.*, Civil Action No. 96–1537–E (S.D. Cal.), was lodged on September 5, 1996 with the United States District Court for the Southern District of California. In the complaint in that action, the United States seeks from defendants Merck & Co., Inc. and Monsanto Company civil penalties and injunctive relief under Section 113(b) of the Clean Air Act (the ''Act''), 42 U.S.C. 7413(b), for their violations of the California State Implementation Plan by failing to: obtain authority to construct permits, apply lowest achievable emissions rates, and provide offsets for increased emissions, relating to modifications of the Kelco facility in San Diego, California.

The proposed consent decree requires the defendants to perform specified injunctive relief by installing new emissions control equipment at two portions of the facility to control volatile organic compounds, to perform two supplemental environmental projects to further control fugitive emissions at one portion of the facility, and a monitoring project at another portion of the facility, and to pay a civil penalty of $1,857,395.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States* v. *Merck & Co., Inc.*, DOJ Ref. # 90–5–2–1–1982.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of California, 880 Front Street, San Diego, California 92101; at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $17.00 (25 cents

per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23492 Filed 9–12–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Revised Amended Work Plan, Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

In accordance with Departmental policy, notice is hereby given that a proposed revised Amended Work Plan was lodged on August 29, 1996, with the United States District Court for the Eastern District of Pennsylvania (''District Court''), in *United States* v. *Raymark Industries, Inc., et al.,* C.A. No. 85–3073 (E.D. Pa.). Pursuant to a Stipulation between the parties in *Raymark Industries,* the revised Amended Work Plan has been substituted for the Amended Work Plan (''1993 Plan'') attached to a Modification to Consent Decree that was lodged with the District Court on June 29, 1994 (''1994 Modification'').

The 1993 Plan conformed the remedy for certain groundwater contamination affecting municipal drinking water wells in Hatboro Borough, Pennsylvania to the remedy chosen by the United States Environmental Protection Agency (''EPA'') in its Record of Decision (''ROD'') to abate groundwater contamination at and under the Raymark Site, located at 220 Jacksonville Road, Hatboro, Pennsylvania. This was necessary because the original Consent Decree, entered in 1989 prior to EPA's publication of the ROD, had required the Hatboro Borough Municipal Authority (''Hatboro'') to pump and treat water at a location different than that later set forth in the ROD. Under the Decree, the defendants paid Hatboro, an intervening plaintiff in the *Raymark Industries* case, the sum of $612,500. In return, Hatboro was to pump and treat groundwater originating at the Site at an off-Site location.

Prior to the expiration of the public comment period on the 1994 Modification and the 1993 Plan attached to it, Hatboro asked that the 1994 Modification not be entered pending further revisions to the 1993 Plan needed to accommodate changes in the operation of its water supply and distribution system (''System'') and a potential sale of its System. Following extensive negotiations, the United States, Hatboro, and the defendants are in agreement on a proposed revised Amended Work Plan containing three major revisions to the 1993 Plan. First, because Hatboro does not anticipate needing well H–16 as a water supply well, Hatboro need only recover and treat groundwater at well H–16 if Hatboro elects in the future to operate that well as a water supply well. (Under the 1993 Plan, Hatboro was unconditionally required to construct a recovery and treatment system at well H–16.) Second, Hatboro is to take over certain operation and maintenance functions at the existing groundwater recovery system at the Raymark Site which are now being performed by EPA. Third, the revised Amended Work Plan contains extensive sampling and monitoring requirements which Hatboro must perform at its wellfield, regardless of whether the Hatboro System is sold or not.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the 1994 Modification and the proposed revised Amended Work Plan. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Raymark Industries, Inc.,* DOJ Ref. #90–11–2–12. The 1994 Modification and revised Amended Work Plan may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, 12th Floor, Suite 1200, Philadelphia Life Building, Philadelphia, Pennsylvania 19106, and the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. A copy of the 1994 Modification and the revised Amended Work Plan may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting a copy of the proposed Modification and revised Amended Work Plan (Appendix A to the Modification), please refer to the referenced case and enclose a check in the amount of $7.25 (25 cents per page reproduction costs), payable to the Consent Decree Library. Please enclose an additional $19.25 should you wish to order a copy of the ROD (Appendix B).

Joel M. Gross

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23493 Filed 9–12–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,467; Rissler & McMurry Co., Welding Div., Casper, WY

TA–W–32,452; Spartan Mills, Beaumont Plant, Spartanburg, SC

TA–W–32,517; International Paper Co., Veneta, OR

TA–W–32,480; Beaufab Mills, Inc., Stroudsburg, PA

TA–W–32,518; Lloyd Smith Co., Inc., Bradford, PA

TA–W–32,490; Tempered Spring, Inc., Jackson, MI

TA–W–32,402; Fluid Pack Pump, Woodward, OK

TA–W–32,577; Uniroyal Technology Corp., Ensolite Div., Mishawaka, IN

TA–W–32,295; Mariners-Astubeco, Inc., Edgewater, NJ

TA–W–32,583; Greenfield Research, Inc., Hermann, MO

TA–W–32,541; Prentiss Manufacturing Co., Iuka, MS

TA–W–32,562; Columbia Natural Resources, Inc., Charleston, WV
TA–W–32,590; Goodyear Tire & Rubber Co., Niagara Falls, NY
TA–W–32,484; Wyeth Laboratories, Inc., Mason, MI
TA–W–32,637; Aeroquip Corp., (AKA Trinova Corp.), Automotive Products Group, Henderson, KY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,609; Felters Co., Millbury, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,503; Operations & Systems Service Department (O&S), Mobil Administrative Service Co., Inc., Dallas, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,444; Sunbeam, Sunbeam Household Products, Cookeville, TN

In early 1995, the parent company made a corporate decision to transfer its production of small electrical motors from its Cookeville, TN plant to another existing domestic facility.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,570; The Safety Stitch, Inc., Harrisville, WV: June 14, 1995.
TA–W–32,466; Dyna-Safe of Wyoming, Inc., Mountain View, WY: May 31, 1995.
TA–W–32,474; Varsity Manufacturing Co., Inc., Susquehanna, PA: June 5, 1995.
TA–W–32,500; John F. Queeny Plant, Monsanto Chemical Co., St. Louis, MO: June 13, 1995.
TA–W–32,532, A,B,C; Orbit Industries, Inc., Helen, GA, Cleveland Sportswear, Cleveland, GA, Clarkesville Garment, Clarkesville, GA, Union County Sportswear, Blairsville, GA: June 24, 1995.
TA–W–32,499; Alden Electronics, Inc., Westboro, MA: June 7, 1995.
TA–W–32,478; Nestaway Canal Wire Facility, Nestaway Div. of Axia, Inc., Canal Winchester, OH: June 12, 1995.
TA–W–32,421; Mould Services, Inc., Malden, ME: May 28, 1995.
TA–W–32,460; Original American UGHS Co. of UGG Holdings, Inc., Portland, OR: May 20, 1995.
TA–W–32,557, A,B,C; Cluett Peabody & Co., Inc., Atlanta, GA, Albertville Plant, Albertville, AL, The Enterprise Plant, Enterprise, AL, Austell Plant, Austell, GA: September 12, 1996.
TA–W–32,386; Sew Fine, Inc., Maryville, TN: May 8, 1995.
TA–W–32,425; Jama/Southside Apparel, Petersburg, TN: May 24, 1995.
TA–W–32,415; Medley Co. Cedar, Inc., Santa, ID: May 24, 1995.
TA–W–32,427 & A; McClouth Steel, Trenton, MI & Gibraltar, MI: May 28, 1995.
TA–W–32,509 & A,B; Caribou Limited, AKA Warehouse, Inc. & MMR Corp., Nashville, TN, Carbou Limited/AKA C'Mon Sportswear, New York, NY, Caribou Limited, Allamont, TN: June 14, 1995.
TA–W–32,526; The Kendall Co., Albertville, AL: June 20, 1995.
TA–W–32,559; United Technologies Automotive Wiring Systems Div., Newton, IL: July 12, 1995.
TA–W–31,878; Klear Knit of Stateville, Inc., Statesville, NC: January 19, 1995.
TA–W–31,796; Magee Apparel Manufacturing Co., Magee, MS: December 14, 1994.
TA–W–31,797; Magee Apparel Manufacturing Co., Collins, MS: December 14, 1994.
TA–W–31,963; Converse, Inc., Lumberton, NC: February 13, 1995.
TA–W–32,488; Big J. Apparel, Inc., Waco, TX: June 10, 1995.
TA–W–32,569; National Castings, Inc., Ciceron, IL: July 8, 1995.
TA–W–32,392; Tennessee River Manufacturing, Adamsville, TN: October 23, 1994.
TA–W–32,498; Lucent Technologies, Lee Summit, MO: June 19, 1995.
TA–W–32,508; Truck-Lite Co., Inc., Falconer, NY: May 31, 1995.
TA–W–32,523; Pioneer Cut Stock, Inc., Prineville, OR: June 19, 1995.
TA–W–32,462; Prescott Manufacturing Corp., Prescott, AR: June 3, 1995.
TA–W–32,579; Mr. Casuals, Troutdale, VA: July 12, 1995.
TA–W–32,457 & TA–W–32,458; Sara Lee Knit Products, Lumberton, NC & Jefferson, NC: June 4, 1995.
TA–W–32,456; Lexington Fabrics, Inc., Corinth, MS: June 6, 1995.
TA–W–32,495; Eaton corp., Golf Grip Div., Laurinburg, NC: June 13, 1995.
TA–W–32,512; SST Energy Corp., Casper, WY: June 6, 1995.
TA–W–32,560; Bortz Chocolate, Inc., A Subdivision of the Allan Div. of DeTrebor Allan, Inc., Reading, PA: July 12, 1995. of GA:
TA–W–32,607; Katie Brooke, Inc., Avon, MA: July 10, 1995.
TA–W–32,611; J.M. Huber Corp., Oil and Gas Div., Houston, TX: July 26, 1995.
TA–W–32,502; V.R. Fashion, Inc., Waco, TX: July 12, 1995.
TA–W–32,492 & TA–W–32,493; American Tourister Jacksonville, FL & Warren, RI: June 11, 1995.
TA–W–32,521; BP Exploration (Alaska), Anchorage, AK: August 22, 1996.
TA–W–32,507; Dive N Surf, Inc., d/b/a Body Glove International, Torrance, CA: June 19, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01132; Dale Electronics, Inc., Bradford Electronics, Bradford, PA
NAFTA–TAA–01116; Nu-Tech Precision Metals L.P., Waterbury, CT
NAFTA–TAA–01124; Uniroyal Technology Corp., Ensolite Div., Mishawaka, IN
NAFTA–TAA–01099; Stream International, Inc., Lindon, UT
*NAFTA–TAA–01166; Woodbridge Group/*Cartex Corp., Fairless Hills, PA
NAFTA–TAA–01139; Evanite Fiber Corp., Submicro Div., Corvallis, OR
NAFTA–TAA–01133; MX5 Brahamans, Robinson, TX
NAFTA–TAA–01144; Burlington Industries, Burlington Knitted Fabrics Div.,-Wake Finishing Wake Forest, NC
NAFTA–TAA–01156; Hallelujah Logging, Lakeview, OR
NAFTA–TAA–01127; Private Western Brands, Inc., El Paso, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01154; FAI Electronics Corp., A Unit of Future Electronics, Portland, OR
NAFTA–TAA–01137; Union Pacific Railroad Co., Portland, OR

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01135; Westbrook Wood Products, Coquille Mill, Coquille, OR: July 5, 1995.
NAFTA–TAA–01128; J & M Apparel, Inc., Finger, TN: June 21, 1995.
NAFTA–TAA–01155 & A; The Olga Co, Div. of Warnaco, Inc., Santa Paula, CA and Fillmore, CA: June 27, 1995.
NAFTA–TAA–01134: Rives Associated Companies, W & J Rives, Inc., High Point, NC: July 10, 1996.
NAFTA–TAA–01140; Ransom Industries, Inc., Tyler Pipe Industries, Tyler, TX: June 17, 1995.
NAFTA–TAA–01106; Pioneer Cut Stock, Inc., Prineville, OR: June 26, 1995.
NAFTA–TAA–01125; Oak Grigsby, Inc., Oak Frequency/Controls Group, Sugar Grove, IL: July 8, 1995.
NAFTA–TAA–01138; United Technologies Automotive, Wiring Systems Div., Newton, IL: July 12, 1995.
NAFTA–TAA–01131; Bortz Chocolate, Inc., A Part of the Allan Div. of DeTrebor Allan, Inc., Reading, PA: July 12, 1995.
NAFTA–TAA–01118; KL Manufacturing Col, Inc., Post Falls, ID: July 1, 1995.
NAFTA–TAA–01141; Strick Corp., Casa Grande, AZ: July 18, 1995.
NAFTA–TAA–01160; Protein Genetics, ABS Global, Inc., Deforest, WI: July 27, 1995.
NAFTA–TAA–01170; The Chas. H. Lily Co., Portland, OR: July 30, 1995.
NAFTA–TAA–01104; Munro & Co., Inc., Clear Lake Footwear, England, AR: June 28, 1995.
NAFTA–TAA–01148; Osh Kosh B'Gosh, Inc., Celina Manufacturing, Celina, TN: July 17, 1995.

I hereby certify that the aforementioned determinations were issued during the month of August, 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 29, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23541 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

TA–W–32,524, Blount, Incorporated, Owatonna, Minnesota; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 8, 1996 in response to a worker petition which was filed on behalf of workers and former workers at Blount, Incorporated, Owatonna, Minnesota (TA–W–32,524).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 26th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23543 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 100 & 100B]

COLE HAAN, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In according with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on May 10, 1996, applicable to all workers of Cole Haan, Cole Haan Manufacturing Division, Lewiston, Maine. The notice was published in the Federal Register on May 24, 1996 (61 FR 26220).

At the request of State Trade Coordinator, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Yarmouth, Maine location. The workers are engaged in the production of moccasins for Cole Haan manufacturing facilities.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of moccasins. Accordingly, the Department is amending the certification to cover the workers of Cole Haan, Corporate Headquarters location, Yarmouth, Maine.

The amended notice applicable to TA–W–32,100 is hereby issued as follows:

All workers of Cole Haan, Manufacturing Division, Lewiston, Maine (TA–W–32,100), and Cole Haan, Corporate Headquarters Location, Yarmouth, Maine (TA–W–32, 100B) who became totally or partially separated from employment on or after March 11, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of September 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23534 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

TA–W–31,851, Ditto Apparel of California, Incorporated Colfax, Louisiana and TA–W–31,851A, Ditto Apparel of California, Incorporated Bastrop, Louisiana; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 26, 1996, applicable to all workers of Ditto Apparel of California, Incorporated, Colfax, Louisiana. The notice was published in the Federal Register on March 19, 1996 (61 FR 11224).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Ditto Apparel of California, Incorporated, Bastrop, Louisiana location. The workers are engaged in the production of ladies', misses and junior jeans.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of jeans. Accordingly, the Department is amending the certification to cover the workers of Ditto Apparel of California, Incorporated, Bastrop, Louisiana.

The amended notice applicable to TA–W–31,851 is hereby issued as follows:

All workers of Ditto Apparel of California, Incorporated, Colfax, Louisiana (TA–W–31,851) and Ditto Apparel of California, Incorporated, Bastrop, Louisiana (TA–W–31,851A) who became totally or partially separated from employment on or after January 23, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23535 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

TA–W–32,208, El Paso Natural Gas Company, El Paso, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at El Paso Natural Gas Co., El Paso, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–32,208; El Paso Natural Gas Co., El Paso, Texas (August 26, 1996)

Signed at Washington, DC this 28th day of August, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23542 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,237; TA–W–32,237A; and TA–W–32,237B]

Intercontinental Branded Apparel; Florida, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 15, 1996, applicable to all workers of Intercontinental Branded Apparel located in Hialeah, Florida. The notice was published in the Federal Register on April 29, 1996 (61 FR 18757).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations will occur at the Intercontinental Branded Apparel plants located in Dunkirk and Buffalo, New York. Workers at the Dunkirk plant produce pants, and workers at the Buffalo manufacturing facility produce coats.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Intercontinental Branded Apparel in Dunkirk and Buffalo, New York.

The amended notice applicable to TA–W–32,237 is hereby issued as follows:

All workers of Intercontinental Branded Apparel, Hialeah, Florida (TA–W–32,237), Dunkirk, New York (TA–W–32,237A) and Buffalo, New York (TA–W–32,237B), who became totally or partially separated from employment on or after April 8, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23544 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

TA–W–32,205, Progressive Knitting Mills of Pennsylvania, Incorporated Philadelphia, Pennsylvania; Notice of Revised Determination on Reconsideration

On June 12, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to all workers of Progressive Knitting Mills located in Philadelphia, Pennsylvania. The notice was published in the Federal Register on July 7, 1996 (61 FR 34874).

By letter of July 31, 1996, the union representative requested administrative reconsideration of the Department's findings. The workers produce men's women's and childrens' active wear. Production and employment at the subject firm declined during the time period relevant to the investigation.

New findings on reconsideration show that the active wear production by Progressive Knitting Mills is mass marketed. Therefore, the articles manufactured by the subject firm have been impacted importantly by the high penetration of active wear imports in this market. In 1994 and 1995, the ratio of U.S. imports to domestic production of men's and boy's swimwear; and women's and girls' slacks and shorts was more than 100%.

Conclusion

After careful review of the additional facts obtained on reconsideration, I concluded that increased imports of articles like or directly competitive with active wear and swimwear products produced at the subject firm contributed importantly to the declines in sales or production and to the total or partial separation of workers of affected all workers of the Progressive Knitting Mills of Pennsylvania, Incorporated in Philadelphia, Pennsylvania. In accordance with the provisions of the act, I make the following certification:

All workers of Progressive Knitting Mills of Pennsylvania, Incorporated, Philadelphia, Pennsylvania who became totally or partially separated from employment on or after March 27, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 23th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23536 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,227 & 227A]

Ralph Lauren Womenswear, Incorporated, Bidermann Industries Corporation, New York, NY & Secaucus, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on July 16, 1996, applicable to all workers of Ralph Lauren Womenswear, Incorporated, Bidermann Industries Corporation located in New York, New York. The notice was published in the Federal Register on August 2, 1996 (61 FR 40455).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations will occur at the Bidermann Industries Corporation plant located in Secaucus, New Jersey. Workers at the Secaucus plant produce ladies' apparel.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Ralph Lauren Womenswear, Incorporated, Bidermann Industries Corporation, Secaucus, New Jersey.

The amended notice applicable to TA–W–32, 227 is hereby issued as follows:

All workers of Ralph Lauren Womenswear, Incorporated, Bidermann Industries Corporation, New York, New York (TA–W–32, 227), and Secaucus, New Jersey (TA–W–227A), who became totally or partially separated from employment on or after January 31, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23537 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,445 & 445A]

Rubin Gloves, Inc., Gloversville, New York and Leased Workers of Staffers Inc., Doing Business as TBM, Glens Falls, New York, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 233 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 1996, applicable to all workers of Rubin Gloves, Inc., located in Gloversville, New York. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The Department's review of the certification revealed that workers at the subject firm's affiliate, Ronev Corporation, Amsterdam, New York were inadvertently excluded from the certification. The employees were engaged in employment related to the production of gloves. Other new findings show that leased workers of Staffers, Inc. doing business as TBM located in Glens Falls, New York, providing administrative support services to Rubin Gloves, Inc., in Gloversville, have been separated from employment as a result of the closure of the Rubin Gloves production facility.

The intent of the Department's certification is to include all workers of Rubin Gloves, Inc., who were adversely affected by imports. Accordingly, the Department is amending the certification to include all workers of Ronev Corporation, Amsterdam, New York, and leased workers of Staffers, Inc., doing business as TBM located in Glens Falls, New York, who became totally separated from employment with TBM as the result of the closing of Rubin Gloves, Inc.

The amended notice applicable to TA–W–32,445 is hereby issued as follows:

All workers of Rubin Gloves, Inc., Gloversville, New York, and leased workers of Staffers, Inc., doing business as TBM, Glens Falls, New York who became totally separated from employment with TBM as the result of their separation from Rubin Gloves, Inc. (TA–W–32,445), and all workers of Ronev Corporation, Amsterdam, New York (TA–W–32,445A), who became totally or partially separated from employment on or after May 30, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23538 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,632]

Weldotron Corporation, Piscataway, New Jersey; Including Workers Off-Site in the Following States: California TA–W–29,632A; Colorado TA–W–29,632B; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reconsideration to Apply for Worker Adjustment Assistance on March 12, 1996, applicable to all workers of Weldotron Corporation located in Piscataway, New Jersey.

At the request of State agencies, the Department reviewed the certification for workers of the subject firm. New findings show that layoffs have occurred for workers employed by Weldotron Corporation, Piscataway, New Jersey, working off-site in California and Colorado. The workers provide administrative and sales support services for the production of automatic sealer packaging machines.

The intent of the Department's certification is to include all workers of Weldotron Corporation adversely affected by imports. Accordingly, the Department is amending the certification to include administrative and sales support workers of the subject firm located in the States of California and Colorado.

The amended notice applicable to TA–W–29,632 is hereby issued as follows:

All workers of Weldotron Corporation in Piscataway, New Jersey (TA–W–29,632), and off-site staff located in California (TA–W–29,632A) and Colorado (TA–W–29,632B) who became totally or partially separated from employment on or after November 25, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 96–23539 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act Public Law 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Program Manager of OTAA not later than September 23, 1996.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than September 23, 1996.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of August, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
Runny Mede Mills (Co.)	Tarboro, NC	07/26/96	NAFTA–01159	Hosiery.
Protein Genetics; ABS Global, Inc. (Wkrs).	Deforest, WI	07/30/96	NAFTA–01160	Bovine semen.
Dura-Bond Industries; Dura-Bond Coating (IUDE).	Highspire, PA	07/31/96	NAFTA–01161	Internal and external coating of large steel pipe.
Reznor; Unit of Thomas and Betts Corp. (USWA).	Mercer, PA	07/30/96	NAFTA–01162	Infrared heaters.
Fire Mountain Enterprises (Co.)	Colstrip, MT	07/23/96	NAFTA–01163	General construction.
Sun Broom Co. (Wkrs)	Mahoon, IL	07/31/96	NAFTA–01164	Cedar.
Devro-Teepak, Inc. (Wkrs)	Danville, IL	07/31/96	NAFTA–01165	Meat casing.
Woodbridge Group/Cartex Corp. (IBT)	Fairless Hills, PA	08/02/96	NAFTA–01166	Molded urethane foam.
Remington Arms Company	Ilion, NY	08/02/96	NAFTA–01167	Shotguns.
Holiday Hosiery (Wkrs)	Hudson, NC	08/05/96	NAFTA–01168	Hosiery.
Hubbard Farms (Wkrs)	Lewisburg, WV	08/05/96	NAFTA–01169	Turkey hatching eggs.
Chas. H. Lilly (ICWU)	Portland, OR	08/05/96	NAFTA–01170	Home and garden chemicals.
Strick Corporation (Co.)	Berwick, PA	08/05/96	NAFTA–01171	Truck trailers and container chassis.
Sterling Boot (Wkrs)	Ft. Worth, TX	08/07/96	NAFTA–01172	Western Apparel.
L.L. Brewton Lumber Company (Wkrs)	Winnfield, LA	08/07/96	NAFTA–01173	2″ dimension lumber.
Tyler Farms, Inc. (Wkrs)	Balm, FL	08/05/96	NAFTA–01174	Sweet bell peppers, cucumbers and squash.
Lukens Steel, Inc. (Wkrs)	Washington, PA	08/08/96	NAFTA–01175	Stainless steel, cold rolled sheets, coil and plate steel.
W.E.A. Manufacturing; Specialty Records (Wkrs).	Olyphant, PA	08/09/96	NAFTA–01176	Compact disk.
J.E. Norgan Knitting Mills (Wkrs)	Tamaqua, PA	08/09/96	NAFTA–01177	Thermal underwear.
Anchor Glass Container	Zanesville, OH	08/09/96	NAFTA–01178	Mould and blank equipment.
V.R. Fashions, Inc. (Wkrs)	Waco, TX	08/12/96	NAFTA–01179	Athletic clothing.
Jo-Nez Apparel, Inc. (Co.)	Tompkinsville, KY	08/12/96	NAFTA–01180	Denim jeans.
Premier Edible Oils	Portland, OR	08/09/96	NAFTA–01181	Refined edible cooking oils.
Clothing Connection (Wkrs)	Santa Ana, CA	08/12/96	NAFTA–01182	Women's clothing.
Dynamic Axle Co. (Co.)	Rancho Dominguez, CA	08/12/96	NAFTA–01183	Front wheel drive axles.
Teledyne, Inc.; Teledyne Ryan Aeronautical.	San Diego, CA	08/13/96	NAFTA–01184	Aircraft structures.
Hodge Apparel, Inc. (Wkrs)	Harrisville, WV	08/12/96	NAFTA–01185	Blouses.
Raster Graphics, Inc. (Wkrs)	Redmond, OR	08/13/96	NAFTA–01186	Circuit boards.
Whirlpool Corporation	Evansville, IN	08/13/96	NAFTA–01187	Refrigerators.
Apex Mold and Engraving (Wkrs)	Sterling Heights, MI	07/30/96	NAFTA–01188	Production and repair of injection molds.
Precision Machining and Polishing (Co.)	Milwaukee, WI	08/13/96	NAFTA–01189	Jack bases.
Strick Corporation (Co.)	Hughesville, PA	08/05/96	NAFTA–01190	Truck trailer flooring.
Dico Tire (Wkrs)	Clinton, TN	08/14/96	NAFTA–01191	Lawn and garden and industrial tires.
Gonyeas Woodworking (Wkrs)	Monroe, WA	08/13/96	NAFTA–01192	Entertainment cabinets, oak furniture.
Robertshaw Controls Company; Appliance Controls Division (Co.).	Ellijay, GA	08/14/96	NAFTA–01193	Appliances.
Roundwood Timber Products, Inc. (Co.)	Chemult, OR	08/14/96	NAFTA–01194	Lodgepole pine posts and poles.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
BASF Corporation (Wkrs)	Holland, MI	08/09/96	NAFTA–01195	Inks and pigments for printing.
Weyerhaeuser Co. (IAM)	Timberlands, WA	08/16/96	NAFTA–01196	Dimension soft wood lumber.
Newport Shrimp (Wkrs)	Newport, OR	08/16/96	NAFTA–01197	Seafood.
Modular Devices (Co.)	Torrance, CA	08/18/96	NAFTA–01198	Assembly and testing of custom power supplies.
Casa Brand, Inc. (Wkrs)	Los Angeles, CA	08/19/96	NAFTA–01199	Clothing casual wear.
Southwest Fashion, Inc. (Wkrs)	El Paso, TX	08/19/96	NAFTA–01200	Cut garments.
Jar-Car Manufacturing (Co.)	El Paso, TX	08/20/96	NAFTA–01201	Jeans.
U.S. Colors, Inc. (Co.)	Rocky Mount, NC	08/20/96	NAFTA–01202	Apparel, tee shirts.
Rohm and Haas (Wkrs)	Philadelphia, PA	08/19/96	NAFTA–01203	Ion exchange resins and hydrides.
K and M; Division of Avery Denisson (IBT).	Torrance, CA	08/21/96	NAFTA–01204	School and office supplies.
Lucent Technologies (Wkrs)	Little Rock, AR	08/19/96	NAFTA–01205	Printer, keyboards, cellular telephone.
Go/Dan Industries (Wkrs)	Peru, IL	08/20/96	NAFTA–01206	Heater core production.
Plastiflex (Wkrs)	Centralia, IL	08/21/96	NAFTA–01207	Swimming pool hoses.

[FR Doc. 96–23540 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00563]

Thompson Steel Pipe Company, Thompson Tanks Division, Princeton, Kentucky; Including Sales Staff in New Jersey NAFTA–00563A; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Revised Determination on Reconsideration of NAFTA Transitional Adjustment Assistance on February 12, 1996, applicable to all workers of Thompson Steel Pipe Company, Thompson Tanks Division, located in Princeton, Kentucky. The notice was published in the Federal Register on February 28, 1996 (61 FR 7541).

At the request of the State agency and petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that Thompson Steel Pipe Company, Thompson Tanks Division, sales representatives located in New Jersey were inadvertently excluded from the certification.

The intent of the Department's certification is to include all workers of Thompson Steel Pipe Company, Thompson Tanks Division, adversely affected by imports. Accordingly, the Department is amending the certification to include sales representatives for Thompson Steel Pipe Company, Thompson Tanks Division, located in New Jersey.

The amended notice applicable to NAFTA—00563 is hereby issued as follows:

All workers of Thompson Steel Pipe Company, Thompson Tanks Division, Princeton, Kentucky (NAFTA–00563A), and the sales representatives located in the State of New Jersey (NAFTA–00563A) who become totally or partially separated from employment on or after August 9, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23546 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–01135]

Westbrook Wood Products, Coquille Mill, Coquille, Oregon; Including Leased Workers of Cardinal Employment Services, Coos Bay, Oregon; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 14, 1996, applicable to workers of Westbrook Wood Products, Coquille Mill, Coquille, Oregon. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that workers employed by Cardinal Temporary Services, Coos Bay, Oregon have been separated from employment as a result of worker separations at Westbrook Wood Products. The workers produce wood veneer and chips.

The intent of the Department's certification is to include all workers of Westbrook Wood Products who were adversely affected by increased imports from Mexico or Canada. Accordingly, the Department is amending the certification to include leased workers engaged in the production of wood veneer and chips for Westbrook Wood Products, who became totally separated from employment with Cardinal Employment Services, Coos Bay, Oregon.

The amended notice applicable to NAFTA–01135 is hereby issued as follows:

All workers of Westbrook Wood Products, Coquille Mill, Coquille, Oregon who became totally or partially separated from employment on or after July 5, 1995, and leased workers of Cardinal Employment Services, Coos Bay, Oregon engaged in the production of wood veneer and chips for Westbrook Wood Products who became totally separated from employment with Cardinal Employment Services on or after July 5, 1995, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–23545 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. WV960008, WV960009, WV960010, WV960011, WV960013, WV960014, WV960015, WV960016 and WV9600176 dated March 15, 1996.

Agencies with construction projects pending, to which these wage decisions would have been applicable, should utilize Wage Decision WV960007. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and States:

Volume III

Georgia
GA960089 (September 13, 1996)

Volume V

Kansas
KS960068 (September 13, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis—Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Maine
ME960005 (March 15, 1996)
ME960007 (March 15, 1996)
ME960010 (March 15, 1996)
ME960014 (March 15, 1996)
ME960015 (March 15, 1996)
ME960022 (March 15, 1996)
ME960023 (March 15, 1996)
ME960025 (March 15, 1996)
ME960026 (March 15, 1996)
ME960031 (March 15, 1996)
ME960032 (March 15, 1996)
ME960034 (March 15, 1996)
ME960035 (March 15, 1996)
ME960036 (March 15, 1996)
ME960042 (May 24, 1996)
ME960043 (June 28, 1996)
New Hampshire
NH960003 (March 15, 1996)
New York
NY9600002 (March 15, 1996)
NY9600003 (March 15, 1996)
NY9600004 (March 15, 1996)
NY9600005 (March 15, 1996)
NY9600006 (March 15, 1996)
NY9600008 (March 15, 1996)
NY9600010 (March 15, 1996)
NY9600011 (March 15, 1996)
NY9600012 (March 15, 1996)
NY9600013 (March 15, 1996)
NY9600014 (March 15, 1996)
NY9600015 (March 15, 1996)
NY9600016 (March 15, 1996)
NY9600019 (March 15, 1996)
NY9600020 (March 15, 1996)
NY9600022 (March 15, 1996)
NY9600025 (March 15, 1996)
NY9600031 (March 15, 1996)
NY9600032 (March 15, 1996)
NY9600033 (March 15, 1996)
NY9600034 (March 15, 1996)
NY9600037 (March 15, 1996)
NY9600039 (March 15, 1996)
NY9600040 (March 15, 1996)
NY9600041 (March 15, 1996)
NY9600042 (March 15, 1996)
NY9600043 (March 15, 1996)
NY9600044 (March 15, 1996)
NY9600045 (March 15, 1996)
NY9600046 (March 15, 1996)
NY9600048 (March 15, 1996)
NY9600049 (March 15, 1996)
NY9600050 (March 15, 1996)
NY9600051 (March 15, 1996)
NY9600072 (March 15, 1996)
NY9600073 (March 15, 1996)
NY9600075 (March 15, 1996)
NY9600076 (March 15, 1996)
NY9600077 (March 15, 1996)
Rhode Island
RI960001 (March 15, 1996)
RI960002 (March 15, 1996)
RI960003 (March 15, 1996)

Volume II

Delaware
DE960002 (March 15, 1996)
DE960004 (March 15, 1996)

DE960005 (March 15, 1996)
DE960006 (March 15, 1996)
Pennsylvania
PA960008 (March 15, 1996)
PA960026 (March 15, 1996)
West Virginia
WV960002 (March 15, 1996)
WV960003 (March 15, 1996)
WV960007 (March 15, 1996)
WV960012 (March 15, 1996)

Volume III

Florida
FL960049 (March 15, 1996)
FL960053 (March 15, 1996)
FL960055 (March 15, 1996)
Georgia
GA960003 (March 15, 1996)
GA960004 (March 15, 1996)
GA960022 (March 15, 1996)
GA960023 (March 15, 1996)
GA960031 (March 15, 1996)
GA960032 (March 15, 1996)
GA960033 (March 15, 1996)
GA960040 (March 15, 1996)
GA960044 (March 15, 1996)
GA960050 (March 15, 1996)
GA960058 (March 15, 1996)
GA960065 (March 15, 1996)
GA960066 (March 15, 1996)
GA960073 (March 15, 1996)
GA960084 (March 15, 1996)
GA960085 (March 15, 1996)
GA960086 (March 15, 1996)
GA960087 (March 15, 1996)
GA960088 (March 15, 1996)

Volume IV

None

Volume V

Kansas
KS960061 (March 15, 1996)
New Mexico
NM960001 (March 15, 1996)
NM960005 (March 15, 1996)

Volume VI

California
CA960031 (March 15, 1996)
Nevada
NV960001 (March 15, 1996)
NV960005 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 6th day of September 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–23213 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–27–M

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Fall meetings of the Business Research Advisory Council and its committees will be held on October 9 and 10, 1996. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, N.E., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, October 9, 1996

10:00–11:30 a.m.—Committee on Employment Projections

1. Plans for the 1996–2006 projections
2. New developments in data and methodology
3. An update on the employment and earnings outlook for college graduates

1:00–2:30 p.m.—Committee on compensation and Working Conditions

1. Comp2000 update
2. Research in progress
   a. Wage calculator
   b. Relating generic occupations to Federal grades
3. Completed research
   a. Alternative index methodologies for the Employment Cost Index (ECI)
   b. Reconciliation of differences between the Employer Costs for Employee Compensation (ECEC) series and the ECI

3:00–4:30 p.m.—Committee on Price Indexes

1. Update on program developments
   a. Consumer Price Index
   b. Producer Price Indexes
2. Other business

Thursday, October 10, 1996

8:30–10:00 a.m.—Committee on Employment and Unemployment Statistics

1. Welcome/introductions
2. Update on the industrial classification revision
3. New Occupational Employment Wage Survey
4. Other business

10:30–12:30 p.m.—Council Meeting

1. Chairperson's opening remarks
2. Election of vice chair
3. Commissioner Abraham's address and discussion
4. Report on the Survey of Employer-Provided Training
5. Chairperson's closing remarks

1:30–3:00 p.m.—Committee on Productivity and Foreign Labor Statistics

1. Improvements in the BLS multifactor productivity measurement program
2. Recent trends in international comparisons of labor productivity in manufacturing
3. Recent developments in BLS international technical cooperation activities

1:30–3:00 p.m.—Committee on Occupational Safety and Health Statistics

1. Update on the Occupational Safety and Health Statistics (OSHS) budget
2. Release of 1994 case and demographic data
3. Results of the 1995 Census of Fatal Occupational Injuries (CFOI)
4. Update on OSHS/CFOI data on the Internet
5. National Safety Council Congress and Exposition

The meetings are open to the public. Persons with disabilities and those wishing to attend these meetings as observers should contact Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5903, for appropriate accommodations.

Signed at Washington, D.C. the 9th day of September 1996.

Katharine G. Abraham,

Commissioner.

[FR Doc. 96–23533 Filed 9–12–96; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m., Wednesday, September 18, 1996.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Request from a Federal Credit Union to Merge and Convert Insurance.
3. Request from a Federal Credit Union to Convert to a Community Charter.
4. Requests from Federal Credit Unions to Expand their Field of Membership.
5. Final Rule: Amendments to Part 705, NCUA's Rules and Regulations, Community Development Revolving Loan Program for Credits Unions.
6. Final Rule: Amendments to Parts 701, 709, and 741, NCUA's Rules and Regulations, Secondary Capital Accounts.
7. Final Rule: Amendments to Part 711, NCUA's Rules and Regulations, Management Official Interlocks.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Wednesday, September 18, 1996.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–23667 Filed 9–11–96; 1:55 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–133]

Pacific Gas and Electric Company, Humboldt Bay Power Plant, Unit No. 3; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a partial request by Pacific Gas and Electric Company, (licensee) for an amendment to Facility License No. DPR–7 issued to the licensee for Humboldt Bay Power Plant, Unit No. 3, located in Humboldt County, California. Notice of Consideration of Issuance of this amendment was published in the Federal Register on April 24, 1996 (61 FR 18174).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to incorporate administrative and organizational changes.

The NRC staff has concluded that the licensee's request to replace the Final Hazard Summary Report with the SAFSTOR Decommissioning Plan cannot be granted.

By October 8, 1996, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Christopher J. Warner, Esq. Pacific Gas and Electric Company, Post Office Box 7442, San Francisco, California 94120, attorney for the licensee.

For further details with respect to this section, see the application for amendment dated March 13, 1996.

This document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington DC, and at the local public document room located at the Humboldt County Library, 1313 3rd Street, Eureka, California 95501.

Dated at Rockville, Maryland, this 6th day of September 1996.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–23515 Filed 9–12–96; 8:45 am]

BILLING CODE 7590–01–P

Twenty-Fourth Water Reactor Safety Information Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Twenty-Fourth Water Reactor Safety Information Meeting will be held on October 21–23, 1996, 8:30 a.m. to 5:00 p.m., in the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The Water Reactor Safety Information Meeting will be opened by NRC Commissioner Kenneth C. Rogers as the keynote speaker for the plenary session on Risk-Informed, Performance-Based Regulation. Panelists will include vice presidents from two nuclear utilities and senior management from NRC's Office of Nuclear Reactor Regulation. A second plenary session will be held on Wednesday morning and will address the Role of Research in Nuclear Regulation. NRC's James M. Taylor, Executive Director for Operations, will chair a panel of international executives representing research, regulatory, and industry points of view. Themis P. Speis, Deputy Director, RES, will speak at the luncheon on Tuesday, October 22.

The meeting is international in scope and includes presentations by personnel from the NRC, U. S. Government laboratories, private contractors, universities, the Electric Power Research Institute, reactor vendors, and a number of foreign agencies. This meeting is sponsored by the NRC and conducted by the Brookhaven National Laboratory.

The preliminary agenda for this year's meeting includes 7 sessions, along with the panel discussions, on the following topics; High Burnup Fuel, Reactor Pressure Vessel Embrittlement and Thermal Annealing, Probabilistic Risk Assessment, Human Reliability Assessment, and Digital Instrumentation and Control, Probabilistic Seismic Hazard Assessment and Seismic Siting Criteria, Reactor Vessel Lower Head Integrity, Containment and Structural Aging, and Steam Generator Tube Integrity.

Attendees may register at the meeting or in advance by contacting Susan

Monteleone, Brookhaven National Laboratory, Department of Nuclear Energy, Building 130, Upton, NY 11973, telephone (516) 282–7235; or Christine Bonsby, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5838.

Dated at Rockville, Maryland, this 10th day of September, 1996.

For the Nuclear Regulatory Commission.

Alois J. Burda,

Deputy Director, Financial Management, Procurement and Administration Staff, Office of Nuclear Regulatory Research.

[FR Doc. 96–23513 Filed 9–12–96; 8:45 am]

BILLING CODE 7590–01–P

NUREG–0700, Rev. 1; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has developed guidance for the review of advanced control room designs and advanced human-system interfaces that may be located within conventional control rooms. This is being issued as Revision 1 to NUREG–0700, ''Human-System Interface Design Review Guideline,'' which is the successor to, and integrates relevant sections of, the previous guidance used by the NRC staff, NUREG–0700 (1981), ''Guidelines for Control Room Design Reviews.'' NUREG–0700, Revision 1 provides human factors engineering (HFE) guidance to the NRC staff for its: (1) review of the human system interface (HSI) design submittals prepared by licensees or applicants for a license or design certification of commercial nuclear power plants, and (2) performance of HSI reviews that could be undertaken as part of an inspection or other type of regulatory review involving HSI design or incidents involving human performance. The guidance consists of a review process and HFE guidelines. It describes those aspects of the HSI design review process that are important to the identification and resolution of human engineering discrepancies that could adversely affect plant safety. It provides guidance for the NRC staff to use in their review of an applicant's HSI design review process or to guide the NRC staff development of a review or inspection plan. It also provides detailed HFE guidelines for the assessment of HSI design implementations.

NUREG–0700, Revision 1 consists of three stand-alone volumes. Volume 1, ''Process and Guidelines,'' is the principal technical document and includes a detailed discussion of both the review procedures and the HFE guidelines. In Volume 2, ''Reviewer's Checklist,'' the HFE guidelines are in a checklist format. Volume 3, ''Review Software and User's Guide,'' is an interactive software application to support design reviews.

Revision 1 to NUREG–0700 is not a backfit and does not impose new requirements on current plants. It is not a generic communication that proposes a new NRC staff position or seeks additional licensee commitments. This document would not apply to licensees under 10 CFR Part 50 for the review of human-system interfaces unless the licensee initiated a voluntary upgrade.

Revision 1 to NUREG–0700 was developed to apply primarily to advanced reactors. New plant designs submitted to the NRC for review and approval under 10 CFR 52.47(a)(1)(ii) must meet 10 CFR 50.34(f)(2)(iii), which requires a ''control room design that reflects state-of-the-art human factors principles.'' Revision 1 to NUREG–0700 will be used by the NRC staff as part of the comprehensive human factors engineering review process for advanced reactors described in the ''Human Factors Engineering Program Review Model,'' NUREG–0711 (July 1994).

Revision 1 to NUREG–0700 is consistent with a previously established Commission position in that it does not include generic design certification communications or generic decisions for future plants (see SECY–92–224, June 22, 1992). The NUREG itself is not mandatory. Rather, the guidelines contained within it represent good human factors engineering practice based upon state-of-the-art research and validated review criteria developed in the nuclear industry as well as in other fields, primarily military and aerospace. The guidelines have been subjected to extensive independent peer review by subject matter experts as part of their development.

When this document was issued as a draft for comment in March 1995, the Commission encouraged comment ''from all interested parties, and specifically from facilities licensed under 10 CFR Part 50, with regard to the NRC staff's contention that no backfitting is intended for current licensees with the issuance of this guidance document unless a licensee initiates a voluntary upgrade to its human-system interface.'' No such comments were received.

Four sets of written comments were received during the comment period, of which two were essentially identical. One additional set of comments was received after the expiration of the comment period. All comments were considered by the NRC staff in its preparation of the final NUREG. Copies of the submitted comments, together with a copy of the NRC staff's ''Response to Public Comments on Draft NUREG–0700, Revision 1'' (September 21, 1995), are available for inspection at the Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Requests for single copies of NUREGs (which may be reproduced) should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. NUREGs are not copyrighted, and Commission approval is not required to reproduce them.

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

FOR FURTHER INFORMATION CONTACT: Jerry Wachtel, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6498; e-mail JXW4@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of August 1996.

For the Nuclear Regulatory Commission.

Franklin D. Coffman, Jr.,

Chief, Control, Instrumentation & Human Factors Branch, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 96–23514 Filed 9–12–96; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice provides information about interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere); the PBGC furnishes the information in this notice simply for the convenience of the public. Interest rates

are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in September 1996. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in October 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Variable-rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is a specified percentage (currently 80 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in September 1996 (*i.e.*, 80 percent of the yield figure for August 1996) is 5.47%. The following table lists the assumed interest rates to be used in determining variable rate premiums for premium payment years beginning in the one-year period ending with September 1996.

For premium payment years beginning in	The required interest rate is
October 1995	5.24
November 1995	5.10
December 1995	5.01
January 1996	4.85
February 1996	4.84
March 1996	4.99
April 1996	5.28
May 1996	5.43
June 1996	5.54
July 1996	5.65
August 1996	5.62
September 1996	5.47

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in October 1996 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's Federal Register.

Issued in Washington, DC, on this 9th day of September 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–23475 Filed 9–12–96; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Review of a Revised Information Collection; RI 30–2, RI 30–44

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management is submitting to the Office of Management and Budget a request for clearance of a revised information collection. RI 30–2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits. Beginning with the 1995 information collection, only annuitants who have qualifying earned income are required to respond. RI 30–44, Annuitant's Report of Income-Followup, is sent to annuitants whose returned RI 30–2 forms are unusable or damaged.

We estimate 21,000 RI 30–2 forms and 260 RI 30–44 forms are completed annually. The RI 30–2 takes approximately 35 minutes to complete for an estimated annual burden of 12,250 hours. The RI 30–44 takes approximately 5 minutes to complete for an estimated annual burden of 22 hours. The total annual estimated burden is 12,272 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before October 15, 1996.

ADDRESSES: Send or deliver comments to—

Victor C. Roy, Chief, Eligibility Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 2342, Washington, DC 20415

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–23507 Filed 9–12–96; 8:45 am]

BILLING CODE 6325–01–M

Submission for OMB Review: Comment Request for Review of a Revised Information Collection: RI 38–107

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 38–107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

We estimate 25,400 RI 38–107 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before October 15th, 1996.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of

Personnel Management, 1990 E Street, NW., Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–23500 Filed 9–12–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

New:

Proposed Rule 17Ad–17, SEC File No. 270–412, OMB Control No. 3235—new

Proposed Rule 17a–24, SEC File No. 270–426, OMB Control No. 3235—new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval on the following proposed rules:

Proposed Rule 17Ad–17 would require that transfer agents conduct searches using third party database vendors to attempt to locate lost securityholders. Approximately 1,500 respondents will incur a combined estimated average burden of 7,500 hours to comply with proposed Rule 17Ad–17. The estimated annual cost industry-wide is estimated at $500,000. There will be no cost to the Federal Government.

Proposed Rule 17a–24 would require members of national securities exchanges, registered brokers, registered dealers, registered transfer agents, and registered municipal securities dealers to file electronically with the Commission on an annual basis a list of the taxpayer identification numbers of all lost securityholders contained in such respondents' records.

Approximately 2,150 respondents will incur a combined estimated average burden of 4,300 hours to comply with the proposed Rule 17a–24. The estimated average annual cost burden for all respondents to comply with proposed Rule 17a–24 is $129,000. If the respondents submit data through EDGAR, the estimated cost to the Federal Government is $100,000.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 6, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23500 Filed 9–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22204; 812–10006]

Brinson Relationship Funds, et al.; Notice of Application

September 9, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Brinson Relationship Funds (''Trust''), any subsequently created series of the Trust for which Brinson Partners, Inc. (''Brinson''), any entity resulting from Brinson changing its jurisdiction or form of organization, or any entity controlling, controlled by, or under common control with Brinson serves as investment adviser (collectively, ''Series''), and Brinson.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(1) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit any Series to invest in any other Series, and certain Series to invest in certain other Series in excess of the limits of section 12(d)(1)(A) and (B). The order would amend and supersede a prior order by also permitting the latter transactions.

FILING DATE: The application was filed on February 22, 1996, and amended on April 22, 1996, and August 20, 1996. Applicants have agreed to file an amendment during the notices period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: 209 South LaSalle St., Chicago, Illinois 60604-1295.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Branch Chief, at (202) 942–0564, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust currently offers the following six Series, each of which has its own investment objective and policies: The Brinson Global Securities Fund (''Global Fund''), the Brinson, Emerging Markets Equity Fund, the Brinson Emerging Markets Debt Fund, the Brinson Post-Venture Fund, the Brinson High Yield Fund, High Yield Fund, and the Brinson Short-Term Fund. Only accredited investors, as defined in Regulation D under the Securities Act of 1933, may invest in the Trust. The Trust imposes no sales charges or advisory fees and has no

distribution plan pursuant to section rule 12b–1 under the Act. One Series, the Brinson Emerging Markets Equity Fund, charges a redemption fee, but any investment by any other Series in that Fund will not be subject to the fee.

2. Brinson, a wholly-owned subsidiary of Swiss Bank Corporation, is a registered investment adviser under the Investment Advisers Act of 1940. Brinson serves as the investment adviser to each Series. Fund/Plan Services, Inc. (''Administrator'') provides general administrative, accounting and pricing and transfer agency services to each Series, and Bankers Trust Company (''Custodian'') serves as custodian for each Series.

3. Applications request an order to permit each Series to purchase shares of another Series (each purchasing Series, an ''Investing Series''), and to sell its shares to another Series and redeem such shares upon tender by the other Series (each selling Series, a ''Target Series''), and for Brinson to effect such transactions, all in accordance with section 12(d) of the Act.[1] For purposes of the limits in section 12(d)(1)(A) of the Act, each Target Series will be treated as a separate investment company, which means that an Investing Series' ownership of a Target Series will not be aggregated with its ownership of any other Target Series in determining compliance with the limits of that section.

4. Applicants expect that an Investing Series may transfer portfolio securities to a Target Series, or a Target Series may transfer portfolio securities to an Investing Series, in exchange for shares of the Target Series. Applicants contemplate three situations in which such in-kind transactions may occur: (1) When an Investing Series makes an initial investment in the Target Series; (2) in order to avoid unnecessary expense when a Target Series wishes to purchase a security that an Investing Series wishes to sell; and (3) in order for the Target Series to reduce trading costs in the event of unusually large purchases or redemptions. Such in-kind transactions would occur in the first two situations only when the Investing Series holds portfolio securities that would be appropriate investments for a Target Series. These in-kind transactions will comply with the provisions of paragraphs (a) through (f) of rule 17a–7, except that the consideration for the portfolio securities will be shares of the Target Series, rather than cash. In-kind distributions of portfolio securities by a Target Series in redemption of its shares would be made pro rata.

5. Each Investing Series may invest the assets it allocates to particular asset classes in a Target Series that primarily invests in such classes, while also retaining its ability to invest directly in the securities within such asset classes, as authorized by the investing Series' investment objectives and policies. If Brinson believes that it can more economically invest in an asset class directly, rather than through a Target Series, then such direct investment will be made. Each Target Series would reserve the right to discontinue selling shares to any Investing Series if the board of trustees of the Trust determines that sales of the Target Series' shares would adversely affect such Series' portfolio management and operations. Brinson will monitor the magnitude and performance of each Investing Series' investments in the Target Series.

6. Applicants also request to amend the Prior Order to permit any Investing Series that is an Asset Allocation Series (as defined below) to invest in any Target Series that is a Core Series (as defined below) in excess of the limits of section 12(d)(1)(A) of the Act, and the Core Series to sell its shares to the Asset Allocation Series in excess of the limits of section 12(d)(1)(B) of the Act. An Asset Allocation Series is the Global Fund and any Series which may be created in the future which employs an active asset allocation strategy of investing in two or more specific asset classes and which propose to invest in Target Series that are Core Series in excess of the limits of section 12(d)(1)(A). A Core Series is the Brinson Emerging Markets Equity Fund, the Brinson Emerging Markets Debt Fund, the Brinson Post-Venture Fund, the Brinson High Yield Fund, the Brinson Short-Term Fund, and any Series which may be created in the future which invests at least 65 percent of its assets in one particular asset class and in which an Asset Allocation Series may invest in excess of limits of section 12(d)(1)(A). No Asset Allocation Series will also be a Core Series.

7. The Global Fund employs active asset allocation strategies across global equity, fixed income, and money markets and active security selection within each market. The Global Fund may invest in certain asset classes by investing in a Series that invests in that asset class. For example, the Global Fund may invest in equity and debt securities in emerging markets by investing in two other Series of the Trust: the Brinson Emerging Markets Equity Fund and the Brinson Emerging Markets Debt Fund. Such investments by the Global Fund, as well as investments in other Series of the Trust, may be made in excess of the limits of section 12(d)(1).

8. Brinson also serve as investment adviser to another investment company, The Brinson Funds, which offers shares in ten different Series. Pursuant to a prior order,[2] Brinson, The Brinson Funds, and the Trust obtained exemptive relief to permit The Brinson Funds to invest in the Trust and the Trust to sell its shares to The Brinson Funds in excess of the limits of sections 12(d)(1) (A) and (B). Applicants represents that if any Series of The Brinson Funds invests in a Series in excess of the limits of section 12(d)(1)(A), such Series will not invest in any other investment company or portfolio thereof (including another Series) in excess of the limits of section 12(d)(1)(A).

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Applicants believe that the Investing and Target Series may be affiliated persons under section 2(a)(3) of the Act because they share a common investment adviser, and that the Asset Allocation and Core Series may be affiliated persons for the additional reason that an Asset Allocation Series may own more than five percent of a Core Series.

2. Applicants believe that section 17(a) was intended to prohibit affiliated persons in a position of influence or control over an investment company to further their own interests by selling property to an investment company at an inflated value, by purchasing property from an investment company at less than its fair value, or by selling or purchasing property on terms that involve overreaching by the affiliated person. Applicants assert that investments by Investing Series in Target Series will not result in any of the abuses that section 17(a) was designed to prevent. Applicants also believe that it is appropriate to permit the in-kind transactions described above because they do not differ materially from the kind of transactions that rule

[1] Applicants previously obtained an order permitting such transactions, except that the order did not permit the in-kind transactions between the Series, which would be permitted pursuant to the order requested in the application. *Brinson Relationship Funds*, Investment Company Act Release Nos. 21662 (Jan. 5, 1996) (notice) and 21724 (Jan. 31, 1996) (order) (''Prior Order''). The Prior Order would be superseded by the order requested herein.

[2] Investment Company Act Release Nos. 21922 (Apr. 29, 1996) (notice) and 21984 (May 28, 1996) (order).

17a–7 was intended to exempt from the prohibitions of section 17(a).

3. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (1) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (2) the proposed transaction is consistent with the policies of the registered investment company involved; and (3) the proposed transaction is consistent with the general provisions of the Act.

4. Applicants believe that, for the following reasons, the section 17(b) standard has been satisfied. Applicants contend that the Investing Series' purchase and redemption of a Target Series' shares will be effected at net asset value, which is the same consideration paid and received by other shareholders. Applicants also state that no sales loads, redemption fees, or distribution fees under rule 12b–1 will be charged in connection with transactions between Investing and Target Series, and Brinson will receive no advisory fee from the Series. Finally, applicants assert that Investing Series' investments in Target Series will be made in accordance with each Investing Series' investment restrictions and its policies set forth in its registration statement. Applicants also believe that the in-kind transactions are reasonable and fair and do not involve overreaching.

5. Applicants believe that substantial benefits may flow to investors if Investing Series may invest in Target Series. Applicants contend that Investing Series will be able largely to eliminate brokerage costs and custody fees when they invest in Target Series rather than investing directly in individual securities. Applicants also assert that the Investing Series will realize efficiencies when investing small portions in certain asset classes. Direct investments in such asset classes would require the Series' managers to follow a large number of issuers to make a relatively small investment. Applicants believe it will be more efficient to exploit the expertise of portfolio managers of Target Series who specialize in such asset classes. Finally, Applicants believe that investing in Target Series will provide greater diversification because it will expose the Investing Series to a greater range of issuers than if the Series invested directly.

6. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

7. Applicants assert that the restrictions in section 12(d)(1) were intended to prevent the negative effects associated with unregulated pyramiding of investment companies, including (1) unnecessary duplication of costs (*e.g.* sales loads, advisory fees, and administrative costs); (2) undue influence by the fund holding company over its underlying funds; (3) the threat of large scale redemptions of the securities of the underlying investment companies. For the following reasons, applicants believe that the proposed arrangements will not give rise to these dangers.

8. Applicants contend that the proposed structure will not result in significant duplication of the costs of distribution, portfolio management, fund administration or operations. Instead, applicants believe that efficiencies that the Asset Allocation Series should achieve in portfolio management and fund operations will result in net cost savings. Applicants assert that there will be no layering of sales or distribution charges, or advisory fees, because no investment by an Asset Allocation Series will be subject to such charges or fees. Applicants argue that the Administrator will not receive higher fees, as the administration and accounting fees paid to it by the Asset Allocation Series will be reduced by an amount equal to fees paid for such services by the Core Series to the extent that they are attributable to the Asset Allocation Series' investment in the Core Series. Applicants also believe that each Asset Allocation Series' custodial fees will be lower than if it invested directly in the securities held by the Core Series.

9. Applicants believe that there is no risk that the management of an Asset Allocation Series will exercise inappropriate control or undue influence over the management of the Core Series because Brinson is the adviser for all Series, and because there will be a small number of investors in the Core Series, which are marketed solely to accredited investors.

10. Applicants contend that the proposed transactions will reduce the potential for disruptive large scale redemptions because Brinson will serve as investment adviser to the Series and the Series will be part of the same ''group of investment companies,'' as defined in rule 11a–3 under the Act.

11. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants believe that the transactions described above meet the standards set forth in section 6(c).

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Target Series' shares purchased by an Investing Series will not be subject to a sales load, redemption fee, advisory fee, or distribution fee under a plan adopted in accordance with rule 12b–1 under the Act.

2. Investment in shares of a Target Series will be in accordance with each Investing Series' respective investment restrictions and will be consistent with its policies as recited in its registration statement.

3. The applicants will cause Brinson, the Administrator, the Custodian, and their respective affiliates, in their capacities as service providers to the Target Series, to remit to the respective Investing Series, or to waive, an amount equal to all fees received by them or their affiliates under their respective agreements with the Trust, on behalf of the Target Series, to the extent such fees are based upon the Investing Series' assets invested in the shares of a Target Series. Any of these fees remitted or waived will not be subject to recoupment by Brinson, the Administrator, the Custodian, or their respective affiliates at a later date.

4. If Brinson waives any portion of a Target Series' fees or bears any portion of the expenses of a Target Series (an ''Expense Waiver''), the adjusted fees for a Target Series (gross fees minus Expense Waiver) will be calculated without reference to the amounts waived or remitted pursuant to condition 3 above. If the amount waived pursuant to condition 3 exceeds adjusted fees, Brinson also will reimburse the Investing Series in an amount equal to such excess.

5. Each Asset Allocation Series and each Core Series will be part of the same ''group of investment companies,'' as defined in rule 11a–3 under the Act.

6. No Core Series will acquire securities of any investment company or series thereof in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. A majority of the trustees of the Trust will not be ''interested persons,'' as defined in section 2(a)(19) of the Act.

8. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets of each Asset Allocation Series and Core Series; monthly purchases and redemptions (other than by exchange) for each Asset Allocation Series and each of its Core Series; monthly exchanges into and out of each Asset Allocation Series and each Core Series; month-end allocations of the Asset Allocation Series' assets among its Core Series; annual expense ratios for each Asset Allocation Series and for each of its Core Series; and a description of any vote taken by the shareholders of any Cores Series, including a statement of the percentage of votes cast for and against the proposal by the Asset Allocation Series and by the other shareholders of the Core Series. The information will be provided as soon as reasonably practicable following each fiscal year-end of the Trust (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23499 Filed 9–12–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 9, 1996.

A closed meeting will be held on Wednesday, September 11, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, September 11, 1996, at 10:00 a.m., will be:

Institution and settlement of injunction actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Commissioner Johnson, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 10, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–23562 Filed 9–10–96; 4:07 pm]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2439]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic documentation will meet in the Department of State, October 3–4, 1996 in Conference Rooms 1107 and 1105.

The Committee will meet in open session from 9:00 a.m. on the morning of Thursday, October 3, 1996, until 12:00 noon. The remainder of the Committee's sessions from 1:30 p.m. on Thursday, October 3, until 1:00 p.m. Friday, October 4, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail histoffix.netcom.com).

Dated: September 5, 1996.

William Z. Slany,

Executive Secretary.

[FR Doc. 96–23420 Filed 9–12–96; 8:45 am]

BILLING CODE 4710–11–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).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request reinstatement, without change, of a previously approved information collection for which approval has expired. Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 23, 1996 [FR 61, page 25935].

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.

DATES: Comments on this notice must be received on or before October 11, 1996.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Maritime Administration, telephone (202) 366–2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies, and Approved Nonprofit Maritime Training Institutions.

OMB Control Number: 2133–0504.

Type of Request: Reinstatement, without change, of a previously approved information collection for which approval has expired.

Affected Entities: Maritime training institutions interested in acquiring the excess or surplus property from MARAD.

Abstract: 46 U.S.C. 1295g states that excess or surplus property can only be made available to approved maritime training institutions for specific purposes. The information collected is a statement of need/justification for the desired property.

Need: Information collection provides a justification and the intended use of the property by the requester and permits determination of compliance with the statutory requirements.

Estimated Burden: The estimated burden is 120 hours annually.

Issued in Washington, DC, on September 9, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–23416 Filed 9–12–96; 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).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request a reinstatement, without change, of a previously approved information collection for which approval has expired and revision of a currently approved collection. Comments are invited on: whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. 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 34921–34922).

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.

DATES: Comments on this notice must be received on or before October 11, 1996.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street, on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Rotorcraft External Load Operator Certificate Application—FAR 133.

OMB Control Number: 2120–0044.

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

Affected Entities: Rotorcraft External Load Operators.

Abstract: 14 CFR prescribes certification requirements for rotorcraft external load operations. Information is collected from applicants for initial and renewal certification as a Rotorcraft External Load Operator, or from currently certified operators adding additional aircraft or equipment.

Estimated Burden: The estimated burden is 3,268 hours annually.

Title: Explosives Detection Systems Certification Testing.

OMB Control Number: 2120–0577.

Type of Request: Reinstatement, without change, of a previously approved information collection for which approval has expired.

Affected Entities: Manufacturers of explosive detection systems.

Abstract: Public Law 101–604 requires the Administrator of the Federal Aviation Administration to certify explosives detection systems, pursuant to protocols developed outside the agency, prior to mandating their use.

Need: information required is necessary for the FAA to perform the certification testing on systems submitted by manufacturers.

Estimated Burden: The estimated burden is 752 hours annually.

Issued in Washington, DC, on September 9, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–23417 Filed 9–12–96; 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).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request extensions for three currently approved information collections coming up for renewal. Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on July 3, 1996 ([FR 61, page 34920]).

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.

DATES: Comments on this notice must be received on or before October 11, 1996.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

U.S. Coast Guard

1. Title: Application for Vessel Inspection and Waiver.

OMB Control Number: 2115–0007

Type of Request: Extension of a currently approved collection.

Affected Entities: Vessel owner, operator, agent, masters or interested U.S. Government agencies.

Abstract: The collection of information requires the owner, agent or master of a vessel to apply in writing to the Coast Guard before the commencement of the inspection for certification or when, in the interest of national defense, a waiver is desired from the requirements of navigation and vessel inspection.

Need: The reporting requirements of the Application for Inspection of U.S. Vessels and the Application for Waiver and Waiver Order are part of the Coast Guard's Marine Inspection Program authorized by 46 U.S.C. 3306 and 3309.

Estimated Burden: The estimated burden is 1,707 hours annually.

2. Title: Bridge Permit Application Guide.

OMB Control Number: 2115–0050.

Type of Request: Extension of a currently approved collection.

Affected Entities: Public and private owners of bridges over navigable waters of the United States.

Abstract: The collection of information is a bridge permit request submitted as application for Coast Guard approval of proposed bridge projects. Applicants will submit to the Coast Guard a letter of application along with letter size drawings (plans) and maps showing the proposed bridge project and its location.

Need: Title 33 U.S.C. 401, 491, 525, and 535, authorize the Coast Guard to approve plans and locations for all bridges or causeways that are to be constructed over navigable waters of the United States.

Estimated Burden: The estimated burden is 2,600 hours annually.

3. Title: Letter of Intent.

OMB Control Number: 2115–0077.

Type of Request: Extension of a currently approved collection.

Affected Entities: Owners and operators of waterfront facilities.

Abstract: The collection of information is a Letter of Intent which serves as a notice by a facility owner and operator to the Coast Guard that they intend to transfer oil or hazardous materials from their facility.

Need: Under the Federal Water Pollution Control Act and Executive Order 12777, the Coast Guard has the authority to issue regulations to prevent the discharge of oil or hazardous materials from waterfront facilities.

Estimated Burden: The estimated burden is 460 hours annually.

Issued in Washington, DC, on September 6, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–23418 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–62–P

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the Federal Register, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Comments are invited on: whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. 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 34921–34922).

DATES: Comments on this notice must be received on or before October 11, 1996.

ADDRESSES: Written comments on the DOT information collection request should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503, ATTN: DOT Desk Officer. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Training and Checking in Ground Icing Conditions.

OMB Control Number: 2120–0578.

Type of Request: Extension of a currently approved collection.

Affected Public: 2175 air carriers.

Abstract: The required collection that respondents must prepare and submit to the FAA contains those airplane ground deicing/anti-icing policies and procedures that ensure the highest level of safety during icing conditions. All Part 125 and 135 air carriers are effected.

Estimated Burden: The estimated total annual burden is 1,000 hours.

Issued in Washington, DC, on September 9, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–23521 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD8–96–046]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: the Lower Mississippi River Waterway Safety Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 9 a.m. to approximately 11 a.m. on Tuesday, September 17, 1996.

ADDRESSES: The meeting will be held in the basement GSA conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

(1) Presentation of the minutes from the April 16, 1996 full Committee meeting.
(2) Subcommittee Reports.
(3) New Business.
(4) Adjournment.

Dated: August 14, 1996.

T.W. Josiah,

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

[FR Doc. 96–23520 Filed 9–12–96; 8:45 am]

BILLING CODE 4910–14–M

Surface Transportation Board [1]

[Finance Docket No. 32760 (Sub-No. 19)]

Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., The Denver & Rio Grande Western Railroad Company, and The Southern Illinois & Missouri Bridge Company; [Decision No. 53]

Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR),[2] Southern Pacific Transportation Company (SPT), St. Louis Southwestern Railway Company (SSW), SPCSL Corp. (SPCSL), The Denver & Rio Grande Western Railroad Company (DRGW),[3] and The Southern Illinois & Missouri Bridge Company (SIMBCO)[4] have agreed to grant overhead trackage rights, with certain local access rights to Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (SF).[5] These trackage rights are related to the recently approved UP/SP merger in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company. See* Finance Docket No. 32760 (STB served Aug. 12, 1996) (Decision No. 44). These trackage rights, which provide for local access as specified in Decision No. 44, consist of three categories.

The first category consists of trackage rights that were provided for in an agreement entered into on April 18, 1996, by UP/SP, BNSF, and the Chemical Manufacturers Association (CMA). These trackage rights are over: (1) UP's lines—(a) Houston, TX—Longview, TX, (b) Longview, TX—Texarkana, AR, (c) Texarkana, AR—North Little Rock, AR, (d) North Little Rock, AR—Poplar Bluff, MO, (e) Poplar Bluff, MO—Dexter, MO, (f) SIMBCO, IL—Valley Junction, L, and (g) Bald Knob, AR—Fair Oaks, AR; (2) SP's lines—Fair Oaks, AR—Illmo, MO, via Jonesboro, AR, and Dexter Junction, MO; and (3) SIMBCO's lines—Illmo, MO—SIMBCO, IL.

The second category consists of trackage rights over SPT's line between Elvas, CA, in the vicinity of SPT's Fresno Line milepost 136.2 and Stockton, CA, in the vicinity of SPT's Fresno Line milepost 88.9.

The third category consists of trackage rights over: (1) MPRR's main line near Avondale, LA, between MPRR milepost 14.29 and milepost 14.11; and (2) SPT's line near Avondale, LA, between SPT milepost 14.94 and SPT's milepost 9.97 in the vicinity of Westbridge Junction, LA.

The transaction is scheduled to be consummated on, or as soon as possible after, September 11, 1996.

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).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to Finance Docket No. 32760 (Sub-No. 19), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: (1) Paul A. Conley, Jr., Assistant Vice President-Law, 1416 Dodge Street, #830, Omaha, NE 68179; (2) Louis P. Warchot, Associate General Counsel, One Market Plaza, San Francisco, CA 94105; and (3) Richard E. Weicher,Vice President and General Counsel, 6th Floor, 1700 East Golf Road, Schaumburg, IL 60173–5860.

Decided: September 9, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23504 Filed 9–12–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33047]

Cascade and Columbia River Railroad Company—Acquisition and Operation Exemption—Lines of Burlington Northern Railroad Company

Cascade and Columbia River Railroad Company (CCRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 131.2 miles of rail line from the Burlington Northern Railroad Company (BN) between Oroville Subdivision milepost 6.0, north of Olds Junction, WA, and the northern end of the rail line, at about Oroville Subdivision milepost 137.2, in Oroville, WA. In addition, CCRR will acquire incidental overhead trackage rights from BN to operate between Oroville Subdivision milepost 6.0, north of Olds Junction, WA, and Oroville Subdivision

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] UPRR and MPRR are referred to collectively as UP.

[3] SPT, SSW, SPCSL and DRGW are referred to collectively as SP.

[4] SIMBCO is jointly owned by MPRR and SSW.

[5] BN and SF are referred to collectively as BNSF.

[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. 10901.

milepost 1650.2, in Wenatchee, WA, including over any and all tracks in BN's Wenatchee, WA, rail yard for the sole purpose of interchanging freight cars and equipment between CCRR and BN and no other party at the Wenatchee rail yard.

The transaction was expected to be consummated on or after the September 4, 1996 effective date of the exemption. This transaction is related to STB Finance Docket No. 33048, *RailAmerica, Inc.—Continuance in Control Exemption—Cascade and Columbia River Railroad Company,* wherein RailAmerica, Inc. has concurrently filed a verified notice to continue in control of CCRR, upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33047, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Edward D. Greenberg, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., Canal Square, 1054 Thirty-First Street, N.W., Washington, DC 20007.

Decided: September 5, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23501 Filed 9–12–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33048]

RailAmerica, Inc.—Continuance in Control Exemption—Cascade and Columbia River Railroad Company

RailAmerica, Inc. (RailAmerica), a noncarrier, has filed a notice of exemption to continue in control of Cascade and Columbia River Railroad Company (CCRR), upon CCRR's becoming a Class III rail carrier.

The transaction was expected to be consummated on or after the September 4, 1996 effective date of the exemption.

This transaction is related to STB Finance Docket No. 33047, *Cascade and Columbia River Railroad Company—Acquisition and Operation Exemption—Lines of Burlington Northern Railroad Company,* wherein CCRR seeks to acquire and operate certain rail lines from Burlington Northern Railroad Company.

RailAmerica owns and controls seven existing Class III common carrier railroads operating in six states: Evansville Terminal Company, Inc.; Huron & Eastern Railway Company, Inc.; Saginaw Valley Railway Company, Inc.; West Texas & Lubbock Railroad Company, Inc., Plainview Terminal Company; the Dakota Rail, Inc.; and the South Central Tennessee Railroad Company.

RailAmerica states that: (i) the railroads will not connect with each other or any railroads in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33048, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Edward D. Greenberg, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., Canal Square, 1054 Thirty-First Street, N.W., Washington, DC 20007.

Decided: September 5, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23502 Filed 9–12–96; 8:45 am]

BILLING CODE 4915–00–P

[Finance Docket No. 32760 (Sub-No. 18)]

Utah Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., the Denver & Rio Grande Western Railroad Company; [Decision No. 54]

Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR),[2] Southern Pacific Transportation Company (SPT), St. Louis Southwestern Railway Company (SSW), SPCSL Corp. (SPCSL), The Denver & Rio Grande Western Railroad Company (DRGW),[3] have agreed to grant overhead trackage rights, with certain local access rights, over a line of railroad of DRGW to Utah Railway Company (UTAH). These trackage rights are related to the recently approved UP/SP merger in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company. See* Finance Docket No. 32760 (STB served Aug. 12, 1996) (Decision No. 44). The overhead trackage rights extend from milepost 628.8, near Utah Railway Junction, UT, to milepost 450.0, near Grand Junction, CO, a total distance of approximately 178.8 miles, in Carbon, Emory and Grand Counties, UT, and Mesa County, CO. Utah will have the right to interchange at Utah Railway Junction and Grand Junction with UP/SP and the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company. The local rights are for Utah to have access to the coal loading facility of Savage Industries, Inc., Savage Coal

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[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] UPRR and MPRR are referred to collectively as UP.

[3] SPT, SSW, SPCSL and DRGW are referred to collectively as SP.

Terminal, which is located at the so-called CV Spur at milepost 615.8 near Price, UT, and for access to East Carbon Development Company Environmental L.C. at the CV Spur in a transload operation of non-hazardous waste materials.

The transaction is scheduled to be consummated on, or as soon as possible after, September 11, 1996.

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).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to Finance Docket No. 32760 (Sub-No. 18), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: (1) Charles H. White, Jr., Galland, Kharasch, Morse & Garfinkle, 1054 31st Street, N.W., Washington, DC 20007; (2) Paul A. Conley, Jr., Assistant Vice President-Law, 1416 Dodge Street, #830, Omaha, NE 68179; and (3) Louis P. Warchot, Associate General Counsel, One Market Plaza, San Francisco, CA 94105.

Decided: September 9, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23505 Filed 9–12–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–57 (Sub-No. 42X)]

Soo Line Railroad Company—Discontinuance of Trackage Rights Exemption—in Lake, Newton, Benton and Warren Counties, IN and Vermilion County, IL

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue a portion of its trackage rights over approximately 104.9 miles of Consolidated Rail Corporation's (Conrail)[2] line of railroad known as the Danville Secondary between Conrail milepost 4.3+/− at Gibson, IN, and Conrail milepost 109.2+/− at Danville, IL, in Lake, Newton, Benton and Warren Counties, IN, and Vermilion County, IL.[3]

Soo has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been been rerouted over alternative trackage rights;[4] (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 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to 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 15, 1996,[5] unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[6] must be filed by September 23, 1996. Petitions to reopen must be filed by October 3, 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: Larry D. Starns, Esq., General Attorney, CP Legal Services, Office of the U.S. Regional Counsel, 100 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23503 Filed 9–12–96; 8:45 am]

BILLING CODE 4915–00–P

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[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] Soo is the successor in interest to the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, which acquired the trackage rights over the Indiana Harbor Belt Railroad Co. and Conrail pursuant to authority granted in ICC Finance Docket No. 29186 (Sub-No. 1), *Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul, and Pacific Railroad Company—Trackage Rights—Over Indiana Harbor Belt Railroad Company Between North Harvey IL, and Gibson, IN and Consolidated Rail Corporation Between Gibbons, IN and Terre Haute, IN* (ICC served Apr. 16, 1980), as supplemented by decisions served May 8, 1980, and Aug. 6, 1980.

[3] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. Soo, in its verified notice tendered for filing on July 31, 1996, indicated a proposed consummation date of September 21, 1996. However, applicant failed to publish notice in the newspaper as required, and a new filing date of August 26, 1996, was entered when proof of publication was received. Because the verified notice was not complete until August 26, 1996, and hence was not deemed filed until then, the earliest possible consummation date is October 15, 1996. Applicant's representative has confirmed that the correct consummation date is on or after October 15, 1996.

[4] Soo acquired and activated parallel trackage rights on CSXT's line from Blue Island Junction/Woodland Junction/Dolton, IL, to Spring Hill Interlocking/Terre Haute, IN. See *Soo Line Railroad Company—Trackage Rights Exemption—CSX Transportation, Inc.*, ICC Finance Docket No. 31383 (ICC served Jan. 10, 1989).

[5] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(b)(3).

[6] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 26, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to implement the information collection

described below in early September 1996, the Department of Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by September 6, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 96–019–G.
Type of Review: Revision.
Title: Installment Agreement Reminder Notice Survey.
Description: One of the goals of the Internal Revenue Service is to provide, where possible, complete customer satisfaction with the notices sent to its customers. To determine the effectiveness of the CP–521 notice and to identify areas needing improvement, National Office Collection is proposing to conduct this nationwide customer satisfaction survey.
Respondents: Individuals or households.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 1 minute.
Frequency of Response: Other.
Estimated Total Reporting Burden: 83 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–23460 Filed 9–12–96; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

August 27, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1488.
Regulation ID Number: IA–29–96 Temporary and NPRM.
Type of Review: Extension.
Title: Extensions of Time to Make Elections.
Description: The regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make certain elections.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 10 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–23461 Filed 9–12–96; 8:45 am]

BILLING CODE 4830–01–U

Submission for OMB Review; Comment Request

August 26, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to the focus group interviews described below in mid September 1996, the Department of Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by September 10, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 96–020–G.
Type of Review: Revision.
Title: Income Verification Focus Group Interviews.
Description: The IRS will conduct focus group interviews with individual taxpayers to obtain information on taxpayers' burden in providing their tax information to ''third parties'' and to gain some understanding of taxpayers' attitudes relevant to IRS' disclosure of their tax information to third parties pursuant to their authorization.
Respondents: Individuals or households.
Estimated Number of Respondents: 54.
Estimated Burden Hours Per Respondent:
Interview: 2 hours.
Travel: 1 hour.
Frequency of Response: Other.
Estimated Total Reporting Burden: 195 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–23462 Filed 9–12–96; 8:45 am]

BILLING CODE 4830–01–U

Submission to OMB for Review; Comment Request

August 29, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0003.
Form Number: IRS Forms SS–4 and SS–4PR.
Type of Review: Extension.
Title: Application for Employer Identification Number (SS–4); Solicitud de Numero de Identificacion Patronal (EIN) (SS–4PR).
Description: Taxpayers required to have an identification number for use

on any return, statement, or other document must prepare and file Form SS–4 or Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by the IRS and the Social Security Administration (SSA) in tax administration and by the Bureau of the Census for business Statistics.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 3,217,362.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form SS–4 (Min.)	Form SS–4PR (Min.)
Recordkeeping	7	7
Learning about the law or the form	19	22
Preparing the form	45	46
Copying, assembling, and sending the form to the IRS	20	20

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 4,858,689 hours.

OMB Number: 1545–0127.

Form Number: IRS Form 1120–H.

Type of Review: Extension.

Title: U.S. Income Tax Return for Homeowners Associations.

Description: Homeowners associations file Form 1120–H to report income, deductions, and credits. The form is also used to report the income tax liability of the homeowners association. The IRS uses Form 1120–H to determine if the income, deductions, and credits have been correctly computed. The form is also used for statistical purposes.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 60,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—11 hr., 15 min.

Learning about the law or the form—5 hr., 50 min.

Preparing the form—13 hr., 43 min.

Copying, assembling, and sending the form to the IRS—2 hr., 9 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,975,800 hours.

OMB Number: 1545–1411.

Form Number: IRS Form 8843.

Type of Review: Revision.

Title: Statement for Exempt Individuals and Individuals With a Medical Condition.

Description: Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the U.S. because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 150,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8843 Pts. I&II	Form 8843 Pts. I&III (min)	Form 8843 Pts. I&IV (min)	Form 8843 Pts. I&V (min)
Recordkeeping	13	13	13	13
Learning about the law or the form	7	5	4	5
Preparing the form	29	34	24	34
Copying, assembling, and sending the form to the IRS	17	17	17	17

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 172,845 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–23463 Filed 9–12–96; 8:45 am]

BILLING CODE 4830–01–U

Submission to OMB for Review; Comment Request

September 6, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0126.

Form Number: IRS Form 1120–F.

Type of Review: Revision.

Title: U.S. Income Tax Return of a Foreign Corporation.

Description: Form 1120–F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120–F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid the correct amount of tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 19,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—105 hr., 14 min.

Learning about the law or the form—43 hr., 5 min.

Preparing the form—72 hr., 46 min.

Copying, assembling, and sending the form to the IRS—7 hr., 31 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 4,457,505 hours.
OMB Number: 1545–1424.
Form Number: IRS Form 1099–C.
Type of Review: Revision.
Title: Cancellation of Debt.
Description: Form 1099–C is used for reporting canceled debt, as required by section 6050P of the Internal Revenue Code. It is used to verify that debtors are correctly reporting their income.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government.
Estimated Number of Respondents: 350,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 59,047 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 96–23464 Filed 9–12–96; 8:45 am]
BILLING CODE 4830–01–U

Submission to OMB for Review; Comment Request

September 6, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1004.
Form Number: IRS Form 1120–REIT.
Type of Review: Revision.
Title: U.S. Income Tax Return for Real Estate Investment Trusts.
Description: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income, and deductions, and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the REIT has correctly reported its income, deductions, and tax liability.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 363.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—59 hr., 4 min.
Learning about the law or the form—19 hr., 43 min.
Preparing the form—39 hr., 13 min.
Copying, assembling, and sending the form to the IRS—5 hr., 1 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 44,682 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 96–23465 Filed 9–12–96; 8:45 am]
BILLING CODE 4830–01–U

Submission for OMB Review; Comment Request

September 6, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0061.
Form Number: CF 1304.
Type of Review: Extension.
Title: Crew Effects Declaration.
Description: Customs Form 1304 is completed by the master of the arriving carrier to record and list the crew's effects that are accompanying them on the trip, which are defined as merchandise under U.S. statutes. It also is used by the master of the vessel to attest to the truthfulness of the merchandise being carried aboard the vessel as crew's effects.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 9,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17,168 hours.
OMB Numbers 1515–0175.
Form Number: None.
Type of Review: Reinstatement.
Title: Documents Required Aboard Private Aircraft.
Description: The documents required by Customs regulations for private aircraft arriving from foreign countries pertain only to baggage declarations. Customs' also requires that the pilots present documents required by the Federal Aviation Administration (FAA) to be on the plane.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 144,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 minute.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 2,490 hours.
OMB Number: 1515–0178.
Form Number: None.
Type of Review: Reinstatement.
Title: Automotive Products Act of 1965.
Description: Under the Automotive Products Trade Act (APTA), Canadian articles may enter the U.S. so long as they are intended for use as original motor vehicle equipment in the U.S. If diverted to other purposes, they are subject to duties. This information is issued to track these diverted articles and to collect duties on them.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 210.
Estimated Burden Hours Per Respondent/Recordkeeper: 12 hours.
Frequency of Response: On occasion, Quarterly.
Estimated Total Reporting/ Recordkeeping Burden: 23,587 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 96–23466 Filed 9–12–96; 8:45 am]
BILLING CODE 4820–02–U

Submission for OMB Review; Comment Request

September 6, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0399.
Form Number: ATF F 5400.21.
Type of Review: Extension.
Title: Application Permit For User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).
Description: This form is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one time basis.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 1,800.
Estimated Burden Hours Per Respondent: 18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 540 hours.

OMB Number: 1512–0535.
Form Number: None.
Type of Review: Extension.
Title: Reporting of Plastic Explosives Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996.
Description: Possession of plastic explosives by anyone on April 24, 1996, must be reported to the Secretary within 120 days of this date. The report must be submitted n writing by August 22, 1996, and shall describe the quantity, name of manufacturer or importer, marks of identification, and storage location. By statute, failure to report this information subjects the person to fine and or imprisonment under Title 18 U.S.C. Chapter 40.
Respondents: Business or other for-profit, Individuals or households, State, Local or Tribal Government.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other.
Estimated Total Reporting Burden: 100 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W. Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 96–23467 Filed 9–12–96; 8:45 am]
BILLING CODE 4810–31–U

Office of Thrift Supervision

Submission for OMB Review; Comment Request; Correction

September 9, 1996.

In the notice document entitled ''Submission for OMB Review; comment request,'' on page 46507 of the issue of September 3, 1996, in the third column after the phrase ''OMB Number:'', the notice incorrectly listed the number ''1550–0029''. The number ''1550–0059'' should have appeared in its place.

For Further Information Contact: Mary H. Gottlieb, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, (202) 906–7135.

Dated: September 9, 1996.

By the Office of Thrift Supervision.

Mary H. Gottlieb,
Federal Register Liaison Officer.

[FR Doc. 96–23473 Filed 9–12–96; 8:45 am]
BILLING CODE 6720–01–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting; Board of Directors

TIME AND DATE: 8:00 a.m., Tuesday, September 17, 1996.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The Board meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Review of commercial and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold 301–564–3354.

Dated: September 10, 1996.

William H. Timbers, Jr.,
President and Chief Executive Officer.

[FR Doc. 96–23575 Filed 9–10–96; 8:45 am]
BILLING CODE 8720–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Michelangelo and His Influence: Drawings from Windsor Castle'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determined that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art from on or about October 27, 1996 to on or about January 5, 1997, at the Kimbell Art Museum, Fort Worth, Texas, from on or about January 19, 1997 to March 30, 1997, and at the Art Institute of Chicago, Chicago, Illinois, from on or about April 12, 1997 to June 22, 1997, is in the national interest. Public Notice of these determinations is ordered to be published in the Federal Register.

Dated: September 9, 1996.

Les Jin,
General Counsel.

[FR Doc. 96–23509 Filed 9–12–96; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans' Affairs Geriatrics and Gerontology Advisory Committee has been renewed for a 2-year period beginning August 29, 1996, through August 29, 1998.

Dated: September 5, 1996.

[1] A copy of this list may be obtained by contacting Mrs. Jacqueline H. Caldwell, Assistant General Counsel, at 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547–0001.

By direction of the Secretary:
Eugene A. Brickhouse,
Committee Management Officer.
[FR Doc. 96–23470 Filed 9–12–96; 8:45 am]
BILLING CODE 8320–01–M

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs give notice that a meeting of the Veteran's Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on September 26 and 27, 1996. The meeting will take place at the Department of Veterans Affairs, Veterans Benefits Administration Office, Room 542, 1800 G St., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m. on Thursday, September 26, and from 8:30 a.m. to 12:00 noon on Friday, September 27. The purpose of the meeting will be to discuss Veterans Affairs education issues.

On Thursday, the Committee will continue work on obtaining information on State education benefits for veterans. On Friday, Mr. Joe Thompson, Director of New York VA Regional Office will address the Committee.

The meeting will be open to the public. Interested persons may attend, appear before, or file statements with the Committee. For those wishing to attend or file a written statement, please contact Ms. June Schaeffer, Assistance Director, Education Policy and program Administration, (202) 273-7187 prior to September 23, 1996. Oral statements will be heard at 10:00 a.m. on September 26, 1996.

Dated: September 5, 1996.
Eugene A. Brickhouse,
Committee Management Officer.
[FR Doc. 96–23468 Filed 9–12–96; 8:45 am]
BILLING CODE 8320–01–M

Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee will be held at the Hyatt Regency Hotel, Two Tampa Center, Tampa, Florida, October 23 through 26, 1996. The meeting begins with participant registration at 8 a.m. on October 23 and concludes at 3 p.m. on October 26. The meeting is open to the public.

The committee, comprised of sixty national voluntary organizations, advises the Under Secretary for Health and other members of the Department of Veterans Affairs Central Office staff on how to coordinate and promote volunteer activities within VA facilities. The primary purposes of this meeting are: to provide for committee review of volunteer policies and procedures; to accommodate full and open communications between the organizations, representatives and the Voluntary Service Central Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, motivate and recognize volunteers; and to approve committee recommendations.

On October 23, the National Executive Committee will meet from 8:00 a.m. until 12 noon. From 1:00 p.m. until 5:00 p.m. participants will attend a Health Fair. On the morning of October 24, there will be a Plenary Session with Charlie Plumb as guest speaker. In the afternoon participants will choose between two educational workshops. On October 25, a business session will be held from 8:00 a.m. until 10:15 a.m. and a plenary session will be held from 10:30 a.m. until 11:45 a.m. From 12:30 until 2:30 p.m. participants will attend a luncheon. On the morning of October 26, the two educational workshops will repeat. The closing business session will be held from 1:00 p.m. until 3:00 p.m.

For further information, contact the Director, Voluntary Service Office (162), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 273–8952.

Dated: September 5, 1996.
By Direction of the Secretary.
Eugene A. Brickhouse,
Committee Management Officer.
[FR Doc. 96–23469 Filed 9–12–96; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 179
Friday, September 13, 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.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

May 17, 1996.

Correction

In notice document 96–13045 appearing on page 25847 in the issue of Thursday, May 23, 1996, make the following correction:

On the same page, in the second column, in footnote 3 the first line should read ''[3] Category 666-O: all HTS numbers except''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97-1-88-000]

Black Marlin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 96–22871 appearing on page 47508 in the issue of Monday, September 9, 1996, the docket number was omitted and should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–2141–000

Preferred Energy Services, Inc.; Notice of Issuance of Order

Correction

In notice document 96–21385 appearing on page 43352 in the issue of Thursday, August 22, 1996, make the following correction:

On page 43352, in the first column, after the subject heading ''August 15, 1996'' should read ''August 16, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N-100H]

RIN 0910-AA19

Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects

Correction

In the correction to rule document 96–5013 published on page 43119 in the issue of Tuesday, August 20, 1996, the correction should have read as follows:

§ 101.79 [Corrected]

On page 8780, in the first column, in § 101.79(b)(3), in the fifth line, ''(≤0.4 mg)'' should read ''(≥0.4 mg)''.

BILLING CODE 1505–01–D

LEGAL SERVICES CORPORATION

45 CFR Part 1609

Fee-Generating Cases

Correction

In proposed rule document 96–21669 appearing on page 45765 in the issue of Thursday, August 29, 1996, make the following correction:

On pages 45765 through 45767, in the running head, ''Rules and Regulations'' should read ''Proposed Rules.''

BILLING CODE 1505–01–D

Friday
September 13, 1996

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 4, et al.

Federal Acquisition Regulation; Reorganization of FAR Part 13, Simplified Acquisition Procedures; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 12, 13, 16, 41, 43, 49, 52, and 53

[FAR Case 94–772]

RIN: 9000–AH24

Federal Acquisition Regulation; Reorganization of FAR Part 13, Simplified Acquisition Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Acquisition Regulatory Council is proposing to amend the Federal Acquisition Regulation (FAR) to reorganize Part 13 for clarity and make other changes to facilitate the use of electronic commerce in contracting. This effort was initiated as a result of public comments received during the comment period on FAR Case 94–770 published in the Federal Register as an interim rule on July 3, 1995 (60 FR 34741). 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 on the proposed rule should be submitted on or before November 12, 1996 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th and F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR Case 94–772 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul Linfield at (202) 501–1757 or the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405; (202) 501–4755. Please cite FAR case 94–772.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Case 94–772 was initiated in November 1995 as a result of comments received on FAR Case 94–770 published as an interim rule in the Federal Register on July 3, 1995. Two commenters noted that the poor organization of Part 13 and the significant increase in the number of quotes to be evaluated when using FACNET to conduct acquisitions under the simplified acquisition threshold could detract from the realization of the Administration's and the Congress' goals for acquisition reform.

In its comments, the General Services Administration observed that the deficiencies in the organization of Part 13 would become even more apparent as the dual objectives of the Administration and the Congress of reducing the number of contracting officers holding warrants and empowering program personnel to make purchasing decisions were realized. These individuals' reliance on their purchasing activities to support their program requirements would be reduced substantially. However, as a consequence, these individuals would be forced to rely on the FAR in making purchasing decisions, especially under the micro-purchase threshold ($2,500). The GSA noted, for example, that the FAR was virtually silent on the use of the Governmentwide commercial purchase card, a special credit card that agencies could make available to individuals to make and/or to pay for purchases, especially ones that were valued at less than the micro-purchase threshold. Both the National Performance Review and the Congress anticipate expansion of the use of the Governmentwide commercial purchase card will compensate for or allow agencies to make further reductions in contracting personnel.

Micro-purchases and other contract actions under the simplified acquisition threshold comprise approximately 95 percent of the total Governmentwide contract actions made annually. Most of these are made using procedures authorized in Part 13. For this reason, the GSA stressed that this part of the FAR needs to be written in a clear and cohesive manner.

In its comments, the Office of Federal Procurement Policy described how the use of the Federal Acquisition Computer Network (FACNET) to conduct acquisitions under the simplified acquisition threshold was expected to result in a substantial increase in the number of quotes and products submitted by small businesses in response to agency solicitations. FACNET is authorized in the Federal Acquisition Streamlining Act (FASA) and is intended to promote the evolution of the Government's acquisition process from one that is primarily paper-oriented to one that is conducted primarily through electronic commerce. A logical consequence of using FACNET to conduct acquisitions under the simplified acquisition threshold was that the traditional select vendor community that previously was the primary source for small dollar transactions would be replaced by a nationwide vendor community made up of many unknown suppliers offering unfamiliar products. This greatly increased supplier base offering many unfamiliar products would have to be evaluated by substantially reduced agency procurement workforces that had not been exempted from the downsizing experienced by Federal agencies over the last several years.

As a result of issues posed in these comments, a small interagency team was formed to review the interim rule, the disposition of public comments, and to reorganize FAR Part 13 in a more logical and process oriented manner. Included in the tasking to the team was that the reorganization should emphasize such goals of acquisition reform as maximizing the use of (1) FACNET versus paper contracts, (2) simplified acquisition procedures for all procurements under the simplified acquisition threshold, and (3) the Governmentwide commercial purchase card. The team was also asked to develop strategies that facilitated the use of FACNET for purchases made using simplified acquisition procedures and to eliminate inconsistencies between Part 12 and Part 13 (e.g., the use of Standard Form 1449, Solicitation/Contract/Order for Commercial Items).

Elements of this direction that could not be implemented in the final rule on FAR Case 94–770 published in the Federal Register on July 26, 1996 are the subject of this proposed rule. The most important organizational changes made in this proposed rule were the consolidation in Subpart 13.3 of all simplified acquisition procedures for conducting micro-purchases and other purchases under the simplified acquisition threshold and the consolidation of forms used in simplified acquisitions in a new section 13.309. Other changes of note to Part 13 were the placement of existing guidance in more appropriate sections, resulting in the removal of five existing sections and the development of a new Subpart 13.2 for micro-purchases; the addition of section 13.303 providing guidance on the use of the Governmentwide commercial purchase card, a subject on which the current Part 13 is virtually silent; the addition of section 13.306 providing a ''streamlined'' optional clause for use in simplified acquisitions for other than commercial items that parallels certain aspects of 52.212–4 for commercial items. Collateral changes

are proposed in other FAR parts to make necessary citation changes because of material relocated within Part 13.

To facilitate the use of FACNET and reduce the size of agency solicitations, revisions are proposed to Part 52 to permit any provision or clause prescribed in agency acquisition regulations to be incorporated by reference if it can be accessed by potential contractors on the Internet. Section 52.102 has been retitled and rewritten. Other changes proposed include revisions to sections 52.252–1, Solicitation Provisions Incorporated by Reference; 52.252–2, Clauses Incorporated by Reference; and the addition of a new section 52.252–xx, Agency and FAR Provisions and Clauses Accessible Electronically.

Comments on whether the proposed rule improves the utility to users of Part 13 are encouraged. Comments on new material added in Parts 13 and 52, especially with regard to the clauses, are also encouraged. Comments previously submitted on FAR Case 94–770 were considered in drafting the final rule.

This rule does not address changes called for by section 4203 of the Federal Acquisition Reform Act. That section requires that the FAR establish special simplified procedures for the acquisition of commercial items with a value greater than the simplified acquisition threshold but not greater than $5 million. A separate rule is being published to implement section 4203. A reconciliation of these two rules will take place after receipt of public comments.

B. Regulatory Flexibility Act

Changes proposed to Part 13 are not expected to have a significant impact on small entities. However, revisions proposed in Part 52 may have an economic effect on a substantial number of small entities, since it will encourage those small entities that desire to do business with Federal agencies to have the ability to access electronically provisions and clauses used in Federal agency procurements. Accordingly, an initial regulatory flexibility analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration.

This initial regulatory flexibility analysis explains how the current trend in both the private sector and the Government to reduce the use of paper transactions by conducting business electronically will accelerate in the future. FACNET, authorized by FASA, already requires entities desiring to do business with Federal agencies to possess a computer and modem and subscribe to a Value Added Network (VAN). This same equipment would be used to access Internet. Consequently, the additional expense to small entities is anticipated to be the cost of acquiring Internet access if they do not currently subscribe.

While provisions and clauses are not required for micro-purchases, estimated to account for 40 percent of contract actions below $25,000, the proposed rule still would apply to approximately 3.9 million contract actions awarded annually to small business concerns. Currently, the FAR requires that when provisions and clauses are incorporated by reference, the contracting officer, upon request, must make the full text available to the requester. The proposed rule retains this requirement.

Expanded usage of incorporation by reference can reduce the costs associated with participating in agency procurement opportunities for many small entities, since some VANs charge their subscribers by the number of characters sent or received. Incorporation by reference permits agencies to abbreviate the size of solicitations and award documents and also reduces the amount of data that potential contractors must submit back to the contracting officer.

A copy of the IRFA may be obtained from the FAR Secretariat (see **ADDRESSES**). Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*, FAR Case 94–772, in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any additional reporting or information collection requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 12, 13, 16, 41, 43, 49, 52, and 53

Government procurement.

Dated: September 9, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

For the reasons set forth above it is proposed that 48 CFR Parts 4, 12, 13, 16, 41, 43, 49, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 12, 16, 41, 43, 49, 52 and 53 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).

PART 4—ADMINISTRATIVE MATTERS

4.800 [Amended]

2. Section 4.800 is amended to revise the reference in the parenthetical to read ''13.302(d)''.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.102 is amended to revise paragraph (d)(2) and (d)(3) to read as follows:

12.102 Applicability.

* * * * *

(d) * * *

(2) Using the Standard Form 44 (see 13.309(d));

(3) Using the imprest fund (see 13.307); or

* * * * *

12.206, 12.301, and 12.602 [Amended]

4. Sections 12.206, 12.301(c)2), and 12.602 (a) and (b) are amended to replace the references to 13.106–2 with 13.302.

5. Part 13 is revised to read to read as follows:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). See Part 12, Acquisition of Commercial Items, for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602–5 for simplified procedures to be used when acquiring architect-engineering services.

Subpart 13.1—General

13.101 Definitions.

''Bulk funding,'' as used in this part, means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

''Governmentwide commercial purchase card,'' as used in this part, means a purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

''Imprest fund,'' as used in this part, means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

''Purchase order,'' as used in this part, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

''Third party draft,'' as used in this part, means an agency bank draft, similar to a check, which is used to acquire and to pay for supplies and services. (See Treasury Financial Management Manual, Section 3040.70.)

13.102 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to—

(a) Reduce administrative costs;

(b) Improve opportunities for small, small disadvantaged, and women-owned small business concerns to obtain a fair proportion of Government contracts;

(c) Promote efficiency and economy in contracting; and

(d) Avoid unnecessary burdens for agencies and contractors.

13.103 Policy.

(a) Simplified acquisition procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases below the micro-purchase threshold), unless requirements can be met by using required sources of supply under Part 8 (e.g., Federal Prison Industries, Committee for Purchase from People who are Blind or Severely Disabled, and Federal Supply Schedule contracts), existing indefinite delivery/indefinite quantity contracts, or from other established contracts.

(b) The contracting office shall not use simplified acquisition procedures for contract actions exceeding $50,000 after December 31, 1999, unless the office's cognizant agency has certified full FACNET capability in accordance with 4.505–2.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the simplified acquisition threshold even though resulting awards do not exceed that threshold. Requirements aggregating more than the simplified acquisition threshold or the micro-purchase threshold shall not be broken down into several purchases that are less than the applicable threshold merely to permit use of simplified acquisition procedures, or to avoid any requirements that apply to purchases exceeding the micro-purchase threshold.

(d) Simplified acquisition procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services (see 37.104).

(e) In conducting simplified acquisitions the Governmentwide commercial purchase card and electronic purchasing techniques shall be used to the maximum extent practicable.

(f) FACNET shall be used to acquire supplies and services (including construction, research and development, and Architect-Engineer) for contract actions exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold when practicable and cost effective (see 4.506). Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

(g) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond in accordance with 5.203. Contracting officers shall consider all quotes/offers timely received. For acquisitions conducted through FACNET, the contracting officer may consider quotes/offers in accordance with 13.302(b)(2).

(h) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For commercial items, contracting officers have the flexibility to use any combination of the procedures in Subpart 12.6 or Parts 13, 14, 15, 35, or 36 as applicable. For other than commercial items, the procedures in other FAR Parts may be appropriate. Other FAR Parts that may be used include, but are not limited to, Parts 14, 15, 35, and 36 including the use of Standard Form (SF) 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)).

13.104 Procedures.

(a) Purchases under this part should be made in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. Agencies and contracting offices are encouraged to seek out opportunities to cooperate in achieving efficiency and economy using the procedures authorized in this part. Simplified acquisition procedures may be used to reduce the costs, processing time, and/or documentation of acquisitions when using—

(1) Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.

(2) Indefinite delivery contracts (see Subpart 16.5) that permit task or delivery orders to be placed by several contracting or ordering offices in one or more executive agencies.

(3) Blanket purchase agreements (see 13.305) to fill repetitive needs for supplies or services.

(4) The Governmentwide commercial purchase card (see 13.303) as a method to acquire and/or to pay for supplies or services to the maximum extent permitted by regulation.

(5) Bulk funding to the maximum extent practicable. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

(b)(1) Each contracting office should maintain a source list (or lists, if more convenient). New supply sources for the list may be obtained from a variety of sources, including the Procurement Automated Source System (PASS) of the Small Business Administration and the Central Contractor Registration Data Base (CCR) (see 4.503). The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

(i) Small business.

(ii) Small disadvantaged business.

(iii) Women-owned small business.

(2) The status information may be used as the basis to ensure that small business concerns are provided the maximum practicable opportunities to respond to solicitations issued using simplified acquisition procedures.

(c) In making purchases under this part, contracting officers should comply with the following procedures:

(1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an ''all-or-none'' or ''multiple award'' basis provided suppliers are so advised when quotations are requested.

(2) Adhere to the policy in 7.202 relating to economic purchase quantities, when practicable.

(3) Adhere to the public display and synopsis requirements in 5.101 and 5.203.

(4) Make maximum effort to obtain trade and prompt payment discounts (see 14.408–3). Prompt payment discounts shall not be considered in the evaluation of quotations.

(5) Provide for the inspection of supplies or services as prescribed in 46.404.

(6) Incorporate provisions and clauses by reference in solicitations/awards under requests for quotations, provided the requirements in 52.102 are satisfied.

(7) Reject a quotation, oral or written, from a small business concern determined to be nonresponsible (see Subpart 9.1) only after satisfying the procedures described in Subpart 19.6 with respect to Certificates of Competency.

(8) Agencies shall use United States-owned excess or near-excess foreign currency, if appropriate, in making payments under simplified acquisition procedures (see Subpart 25.3).

13.105 Small business set-asides.

(a) Each acquisition (non-FACNET and FACNET) of supplies or services that has an anticipated dollar value exceeding $2,500 and not exceeding $100,000, is reserved exclusively for small business concerns and shall be set aside (see 19.000 and Subpart 19.5).

(b) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by Part 19. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

13.106 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer or begins performance.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at 2.101. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.304–4 for procedures on termination or cancellation of purchase orders.)

13.107 Federal Acquisition Streamlining Act of 1994 (FASA) list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57 (a) and (b) (Anti-Kickback Act of 1986) (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 270a (Miller Act) (Although the Miller Act no longer applies to contracts at or below the simplified acquisition threshold; alternative forms of payment protection for suppliers of labor and material are still required if the contract exceeds $25,000.)

(3) 40 U.S.C. 327–333 (Contract Work Hours and Safety Standards Act—Overtime Compensation).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act) (Only the requirement for providing the estimate of recovered material utilized in the performance of the contract is inapplicable).

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).

(8) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).

(b) The Federal Acquisition Regulatory Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the procurement of property or services, on the list set forth in paragraph (a) of this section, unless the FAR Council makes a written determination that it is in the best interests of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of paragraph (b) of this section do not apply to laws that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section 4101, Pub. L. 103–355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator of the Office of Federal Procurement Policy to include any applicable provision of law not included on the list set forth in paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator of OFPP will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within sixty days of receiving the petition.

13.108 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Pub. L. 103–355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

(a) Clauses implementing Miller Act requirements in 28.102–3;

(b) 52.203–5, Covenant Against Contingent Fees;

(c) 52.203–6, Restrictions on Subcontractor Sales to the Government;

(d) 52.203–7, Anti-Kickback Procedures;

(e) 52.215–2, Audits and Records-Negotiation;

(f) 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation;

(g) 52.223–5, Certification Regarding a Drug-Free Workplace, except for individuals;

(h) 52.223–6, Drug-Free Workplace, except for individuals; and

(i) 52.223–8, Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract.

Subpart 13.2—Micro-Purchases

13.201 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603–3).

(b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases.

(c) Purchases under the micro-purchase threshold may be conducted using any of the procedures described in Subpart 13.3.

(d) Micro-purchases (see the definition in 2.101) conducted through the procedures authorized in Part 12 or Subpart 13.3 do not require provisions or clauses. This paragraph takes precedence over any other FAR requirement to the contrary, but does not prohibit the use of any clause prescribed elsewhere in the FAR when determined necessary by the contracting officer.

(e) The requirements in Part 8, Required Sources of Supplies and Services, apply to purchases below the micro-purchase threshold.

13.202 Purchase guidelines.

(a) *Soliciting, evaluation of quotes, and award.* (1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.603–3(b) considers the price reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(i) The contracting officer or individual appointed in accordance with 1.603–3(b) suspects or has information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(b) *Documentation.* If competitive quotations were solicited and award was made to other than the low quote, documentation to support purchases may be limited to identification of solicited concerns and explanation for the award decision.

Subpart 13.3—Simplified Acquisition Procedures

13.301 Use of options.

Options may be included provided the requirements of Subpart 17.2 are met, and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part.

13.302 Soliciting competition, evaluation of quotes or offers, award, and documentation.

(a) *Soliciting competition.* (1) Contracting officers shall promote competition to the maximum extent practicable to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality) including the administrative cost of the purchase. Solicitations shall notify suppliers of the basis upon which award is to be made.

(2) If FACNET is not available, or an exemption set forth in 4.506 applies, quotations may be solicited through other appropriate means. The contracting officer shall comply with the requirements of 5.101 when not soliciting via FACNET. Sufficient information to permit suppliers to develop quotations may be incorporated into the combined synopsis/solicitation. In such cases, the contracting officer is not required to issue a separate solicitation.

(3) Requests for quotations should be solicited orally to the maximum extent practicable when FACNET is not available or a written determination has been made that it is not practicable or cost-effective to purchase via FACNET. However, oral solicitations may not be practicable for contract actions exceeding $25,000 when synopsized in accordance with 5.101. Paper solicitations for contract actions not expected to exceed $25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practicable. Written solicitations shall be issued for construction contracts over $2,000.

(4) If using simplified acquisition procedures and not using FACNET, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable if the contract action does not require synopsis pursuant to 5.101 and 5.202. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. The following factors influence the number of quotations required in connection with any particular purchase:

(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(5) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (e.g., urgency, exclusive licensing agreements, or industrial mobilization).

(6) Contracting officers shall not solicit quotations based on personal preference. Except as provided in subparagraph (a)(7) of this section, solicitations shall not be restricted to suppliers of well known and widely distributed makes or brands.

(7) If the acquisition was conducted through FACNET, agencies need not

respond to inquiries that are made telephonically or by facsimile unless they are unable to receive inquiries through FACNET. In addition, an agency is not required to receive questions through any medium (including through FACNET) if doing so would interfere with its ability to conduct the procurement in an efficient manner.

(8) Agency requirements shall not be restricted to only one brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless the contracting officer determines that the particular brand name, product or feature is essential to the Government's requirements, and that other companies' similar products, or products lacking the particular feature, would not meet the Government's requirements. This limitation does not prohibit the identification of a requirement:

(i) By use of a brand name, provided the brand name is followed by words such as ''or equal,'' or

(ii) Alternatively, if the requirement does not exceed $25,000, by use of at least three different brand names.

(b) *Evaluation of quotes or offers.* (1) Contracting officers may evaluate quotations or offers based on price alone or price and other factors (see subparagraph (a)(1) of this section). If price and other factors are used, the contracting officer shall use the procedures that will ensure that the evaluation of quotations can be performed in an efficient and minimally burdensome fashion. Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required. Evaluation of past performance does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge of and previous experience with the item or service being purchased, customer surveys, or other reasonable basis.

(2) For purchases conducted using FACNET, the contracting officer may—

(i) After preliminary consideration of all offers, identify from all quotes received one that is suitable to the user, such as the lowest-priced brand name product and quickly screen all lower-priced quotes based on readily discernible value indicators, such as past performance, warranty conditions, and maintenance availability; or

(ii) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced offer having the highest past performance rating possible represents the best value when compared to any lower priced quotes.

(3) Standing price quotations may be used in lieu of obtaining individual quotations each time a purchase is contemplated, provided the contracting officer ensures that the pricing information is current and that the Government obtains the benefit of maximum discounts before award is made.

(4) Quotations shall be evaluated inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) Except for awards conducted through FACNET, notification to unsuccessful suppliers shall be given only if requested.

(3) If a supplier requests information on an award which was based on factors other than price alone, a brief explanation of the basis for the contractaward decision shall be provided (see 15.1002(c)(2)).

(d) *Documentation.* (1) The determination that a proposed price is reasonable should be based on competitive quotations/offers. If only one response is received, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on market research, a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased, comparison to an independent government estimate, or any other reasonable basis.

(2) When other than price related factors are considered in selecting the supplier (see subparagraph(b)(1) of this section), the contracting officer shall document the file to support the final award decision.

(3) If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source.

(4) Documentation should be kept to a minimum. The following illustrate the extent to which quotation/offer information should be recorded.

(i) *Oral solicitations.* The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(ii) *Written solicitations (see 2.101).* Written records of solicitations/offers may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(5) Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see Subpart 4.8).

13.303 Governmentwide commercial purchase card.

(a) The Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases. The Governmentwide commercial purchase card may be used by contracting officers and other individuals designated in 1.603–3.

(b) Agencies using the Governmentwide commercial purchase card shall establish procedures for the use and control of the card which comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4–4500) and are consistent with the terms and conditions of the GSA Federal Supply Service Contract Guide for Governmentwide Commercial Purchase Card Service. Agency procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. They should encourage use in greater amounts by contracting officers to place orders and pay for purchases against contracts established under Part 8 procedures, when authorized, and to make purchases and/or make payment, under other contracts, basic ordering agreements, or blanket purchase agreements when agreed to by the contractor.

(c) The Governmentwide commercial purchase card may be used to—

(1) Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement);

(2) Purchase supplies, services, or construction; or

(3) Make payments, when the contractor agrees to accept payment by the card.

13.304 Purchase orders.

13.304–1 General.

(a) Except as provided under the unpriced purchase order method (see 13.304–2), purchase orders generally are issued on a fixed-price basis. See Part 12 for acquisition of commercial items.

(b) Purchase orders shall—

(1) Specify the quantity of supplies or scope of services ordered.

(2) Contain a determinable date by which delivery of the supplies or performance of the services is required.

(3) Provide for inspection as prescribed in Part 46. Generally, inspection and acceptance should be at destination. Source inspection should be specified only if required by Part 46. When inspection and acceptance will be performed at destination, advance copies of the purchase order or equivalent notice shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of supplies.

(4) Specify f.o.b. destination for supplies to be delivered within the United States, except Alaska or Hawaii, unless there are valid reasons to the contrary.

(5) Include any trade and prompt payment discounts that are offered, consistent with the applicable principles in 14.408–3.

(c) The contracting officer's signature on purchase orders shall be in accordance with 4.101 and the definitions at 2.101. Facsimile and electronic signature may be used in the production of purchase orders by automated methods.

(d) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

13.304–2 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

(1) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(2) The purchase is for

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Material available from only one source and for which cost cannot be readily established; or

(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued by using written purchase orders or electronically. A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.302(d)), process the invoice for payment.

13.304–3 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written (see 2.101) acceptance of the purchase order by the contractor.

(b) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(c) A contractor's acceptance of a purchase order modification may be required to be in writing only if—

(1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

13.304–4 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with—

(1) 12.403(d) and 52.212–4(l) for commercial items; or

(2) Part 49 or 13.306 and 52.213–XX for other than commercial items.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written (see 2.101) acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required (i.e., the purchase order shall be considered canceled).

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed in paragraph (a) of this subsection.

13.304–5 Clauses.

(a) Each purchase order (and each purchase order modification (see 13.304–3)) shall incorporate all clauses required for or applicable to the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213–2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213–3, Notice to Supplier, in unpriced purchase orders.

13.305 Blanket purchase agreements (BPAs).

13.305–1 General.

(a) A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing ''charge accounts'' with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established for use by the level responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt the agency from the responsibility for keeping obligations and expenditures within available funds.

13.305–2 Establishment of BPAs.

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) The use of this procedure would avoid the writing of numerous purchase orders.

(b) After determining a BPA would be advantageous, contracting officers shall—

(1) Establish the parameters to limit purchases to individual items or commodity groups or classes, or permit the supplier to furnish unlimited supplies or services; and

(2) Consider suppliers whose past performance have shown them to be dependable, who offer good quality at consistently lower prices, and who have provided numerous purchases at or below the simplified acquisition threshold.

(c) BPAs may be established with—

(1) More than one supplier for supplies or services of the same type to provide maximum practicable competition;

(2) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period; or

(3) Federal Supply Schedule contractors, if not inconsistent with the terms of the applicable schedule contract.

(d) BPAs should be prepared without a purchase requisition and only after contacting suppliers to make the necessary arrangements for—

(1) Securing maximum discounts;

(2) Documenting individual purchase transactions;

(3) Periodic billings; and

(4) Incorporating other necessary details.

(e) BPAs shall be prepared on the forms specified in 13.309(b) and shall not cite accounting and appropriation data (see 13.305–4(e)(4)).

(1) The following terms and conditions are mandatory:

(i) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(ii) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(iii) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

(iv) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.305–4(b)).

(v) *Individuals authorized to purchase under the BPA.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(vi) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(A) Name of supplier.

(B) BPA number.

(C) Date of purchase.

(D) Purchase number.

(E) Itemized list of supplies or services furnished.

(F) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).

(G) Date of delivery or shipment.

(vii) *Invoices.* One of the following statements shall be included (except that the statement in paragraph (e)(1)(vii)(C) of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(A) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(B) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(C) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that—

(*1*) A consolidated payment will be made for each specified period; and

(*2*) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(D) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(2) If the fast payment procedure is used, the requirements stated under 13.308–3 shall be included.

13.305–3 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in this part that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise (e.g., see 22.305(a), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.305–4 Purchases under BPAs.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the BPA, being a method of simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition threshold.

(b) Unless otherwise specified in agency regulations, individual purchases, except under BPAs established in accordance with 13.305–2(c)(3), shall not exceed $100,000.

(c) The existence of a BPA does not justify avoiding small business set-asides. The requirements of 13.105 and Subpart 19.5 also apply to each order under a BPA.

(d) The existence of a BPA does not justify purchasing from only one source. A synopsis shall be published if required by Subpart 5.2. If for a particular purchase under $2,500 there is an insufficient number of BPAs to ensure maximum practicable competition (see 13.302(a)(4)), the contracting officer shall—

(1) Solicit quotations from other sources and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if—

(i) Recurring requirements for the same or similar items or services seem likely;

(ii) Qualified sources are willing to accept BPAs; and

(iii) It is otherwise practical to do so.

(e) Documentation of purchases shall be limited to essential information and forms as follows:

(1) Purchases generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

(3) If a paper document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Documentation of purchases shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

13.305–5 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this subsection are being followed.

13.305–6 Completion of BPAs.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

13.306 Optional clause.

The clause at 52.213–XX, Terms and Conditions-Simplified Acquisitions (Other than Commercial Items), is prescribed for use in simplified acquisitions exceeding the micro-purchase threshold of supplies and services that are other than commercial items (see 12.301 for commercial items).

(a) The clause is a compilation of the required clauses and the most commonly used clauses that apply to simplified acquisitions and its structure parallels clauses prescribed at 12.301 for commercial items. The clause may be used in lieu of individual clauses prescribed in the FAR.

(b) Except for paragraphs (a) through (d), the clause may be modified to fit the individual acquisition (but see paragraph (c) of this section). Any modification, (i.e., addition, deletion, or substitution) must not create a void or internal contradiction in the clause. For example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

(c) The clause may be used in other simplified acquisitions of other than commercial items (e.g., architect-engineer and construction). If used in other simplified acquisitions of other than commercial items, paragraph (b) may also be modified.

13.307 Imprest funds and third party drafts.

13.307–1 General.

Imprest funds and third party drafts may be used to acquire and to pay for supplies or services. Policies and regulations concerning the establishment of and accounting for imprest funds and third party drafts, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.307–2 Agency responsibilities.

Each agency using imprest funds and third party drafts shall—

(a) Periodically review and determine whether there is a continuing need for each fund or third party draft account established, and that amounts of those funds or accounts are not in excess of actual needs;

(b) Take prompt action to have imprest funds or third party draft accounts adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

(1) Designation of personnel authorized to make purchases using imprest funds or third party drafts; and

(2) Documentation of purchases using imprest funds or third party drafts, including documentation of—

(i) Receipt and acceptance of supplies and services by the Government;

(ii) Receipt of cash or third party draft payments by the suppliers; and

(iii) Cash advances and reimbursements.

13.307–3 Conditions for use.

Imprest funds or third party drafts may be used for purchases when—

(a) The imprest fund transaction does not exceed $500 or such other limits as have been approved by the agency head;

(b) The third party draft transaction does not exceed $2,500, unless authorized at a higher level in accordance with Treasury restrictions;

(c) The use of imprest funds or third party drafts is considered to be advantageous to the Government; and

(d) The use of imprest funds or third party drafts for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.307–1.

13.307–4 Procedures.

(a) Each purchase using imprest funds or third party drafts shall be based upon an authorized purchase requisition, contracting officer verification statement, or other agency approved method of insuring adequate funds are available for the purchase.

(b) Normally, purchases should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using imprest funds or third party drafts.

(d) Forms prescribed at 13.309(e) may be used if a written order is considered necessary (e.g., if required by the supplier for discount, tax exemption, or other reasons). If a purchase order is

used for this purpose, it shall be endorsed ''Payment to be made from Imprest Fund'' (or ''Payment to be made from third party draft,'' as appropriate).

(e) The individual authorized to make purchases using imprest funds or third party drafts shall—

(1) Furnish to the imprest fund or third party draft cashier a copy of the document required under paragraph (a) of this subsection annotated to reflect—

(i) That an imprest fund or third party draft purchase has been made;

(ii) The unit prices and extensions;

(iii) The supplier's name and address; and

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving—

(i) The supplier's name and address;

(ii) List and quantity of items;

(iii) Unit prices and extensions; and

(iv) Cash discount, if any.

13.308 Fast payment procedure.

13.308–1 General.

(a) The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a representation that—

(1) The supplies have been delivered to a post office, common carrier, or point of first receipt by the Government; and

(2) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

(b) The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.308–2 Conditions for use.

If the conditions in paragraphs (a) through (f) of this subsection are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

(a) Individual purchasing instruments do not exceed $25,000, except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance.

(c) Title to the supplies will vest in the Government—

(1) Upon delivery to a post office or common carrier for mailing or shipment to destination; or

(2) Upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure—

(1) Documenting evidence of contractor performance under fast payment acquisitions;

(2) Timely feedback to the contracting officer in case of contractor deficiencies; and

(3) Identification of suppliers who have a current history of abusing the fast payment procedure (also see Subpart 9.1).

13.308–3 Preparation and execution of orders.

Priced or unpriced contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

(a) A requirement that the supplies be shipped transportation or postage prepaid.

(b) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.304–2(c)).

(c) The following statement on consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

13.308–4 Contract clause.

The contracting officer shall insert the clause at 52.213–1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.308–2 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

13.309 Forms.

(a) *Commercial items.* SF 1449, Solicitation/Contract/Order for Commercial Items, shall be used by the contracting officer when issuing a paper solicitation for commercial items, except when using a combined synopsis/solicitation (see Subpart 12.6).

(b) *Other than commercial items.* (1) SF 18, Request for Quotations; SF 1449; or an agency form/automated format may be used for written solicitations. Each agency request for quotations form/automated format should conform with SF 18 or SF 1449 to the maximum extent practicable.

(2) Both SF 1449 and OF 347, Order for Supplies or Services, are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices. An agency form/automated format may also be used.

(c) *Forms used for both commercial and other than commercial items.* (1) OF 336, Continuation Sheet, may be used for written solicitations when additional space is needed.

(2) OF 348, Order for Supplies or Services Schedule—Continuation, or an agency form/automated format may be used for negotiated purchases when additional space is needed. Agencies may print on those forms the clauses considered to be generally suitable for purchases.

(3) SF 30, Amendment of Solicitation/Modification of Contract, or a purchase order form may be used to modify a purchase order, unless an agency form/automated format is prescribed in agency regulations.

(d) SF 44, Purchase Order-Invoice-Voucher, is a multipurpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It can also be used as a receiving report, invoice, and public voucher.

(1) This form may be used if all of the following conditions are satisfied:

(i) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of contingency operations. Agencies may establish higher dollar limitations for specific activities or items.

(ii) The supplies or services are immediately available.

(iii) One delivery and one payment will be made.

(iv) Its use is determined to be more economical and efficient than use of other simplified acquisition procedures.

(2) General procedural instructions governing the form's use are printed on the form and on the inside front cover of each book of forms.

(3) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using this form.

(4) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

(e) SF 1165, Receipt for Cash-Subvoucher, or an agency purchase order form may be used for purchases using imprest funds or third party drafts.

PART 16—TYPES OF CONTRACTS

16.701 [Amended]

6. Section 16.701 is amended to delete the words ''Subpart 13.2'' in the parenthetical and insert ''13.305.''

16.703 [Amended]

7. Section 16.703 is amended in paragraph (c)(1)(vi) to replace the reference to 13.303 with 13.308–3.

PART 41—ACQUISITION OF UTILITY SERVICES

41.202 [Amended]

8. Section 41.202 is amended in paragraph (c)(1) to replace the reference to Subpart 13.5 with 13.304.

PART 43—CONTRACT MODIFICATIONS

43.301 [Amended]

9. Section 43.301 is amended in paragraph (a)(2)(iii) to replace the reference to 13.503 with 13.304–3.

PART 49—TERMINATION OF CONTRACTS

49.002 [Amended]

10. Section 49.002 is amended in paragraph (a) to delete the reference to 13.504(b) and substitute 13.304–4.

11. Section 49.501 is amended to add as the second sentence the following:

49.501 General.

* * * This subpart does not apply to contracts that use the clause at 52.213–XX, Terms and Conditions-Simplified Acquisitions (Other than Commercial Items). * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.101 is amended to revise paragraph (e)(2)(i) to read as follows:

52.101 Using Part 52.

* * * * *

(e) *Matrix.* * * *

(2) * * *

(i) Whether incorporation by reference is or is not authorized (see 52.102);

* * * * *

13. Section 52.102 is revised to read as follows:

52.102 Incorporating provisions and clauses.

(a) Provisions and clauses should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they—

(1) Are used with one or more alternates or on an optional basis;

(2) Are prescribed on a ''substantially as follows'' or ''substantially the same as'' basis; provided, that they are used verbatim;

(3) Require modification or the insertion by the Government of fill-in material (see 52.104); or

(4) Require completion by the offeror or prospective contractor. This instruction also applies to provisions completed as annual representations and certifications.

(b) Except for provisions and clauses prescribed in 52.107, any provision or clause that can be accessed electronically by the offeror or prospective contractor may be incorporated by reference in solicitations and/or contracts. However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Agency approved provisions and clauses prescribed in agency acquisition regulations and provisions and clauses not authorized by Subpart 52.3 to be incorporated by reference need not be incorporated in full text, provided the contracting officer includes in the solicitation and/or contract a statement that—

(1) Identifies all provisions and/or clauses that require completion by the offeror or prospective contractor;

(2) Makes specific reference that the provisions/clauses must be completed by the offeror or prospective contractor and must be submitted with the quote or offer; and

(3) Identifies to the offeror or prospective contractor at least one electronic address where the full text may be accessed.

(d) An agency may develop a group listing of provisions and clauses that apply to a specific category of contracts. An agency group listing may be incorporated by reference in solicitations/contracts in lieu of citing the provisions and clauses individually, provided the group listing is made available electronically to offerors and prospective contractors.

(e) A provision or clause that is not available electronically to offerors and prospective contractors shall be incorporated in solicitations/contracts in full text if it is:

(1) A FAR provision or clause that otherwise is not authorized to be incorporated by reference (see Subpart 52.3); or

(2) A provision or clause prescribed for use in an agency acquisition regulation.

(f) Provisions or clauses may not be incorporated by reference by being listed in the:

(1) Provision at 52.252–3, Alterations in Solicitations, or

(2) Clause at 52.252–4, Alterations in Contract.

52.102–1 and 52.102–2 [Removed]

14. Sections 52.102–1 and 52.102–2 are removed.

52.103 [Amended]

15. Section 52.103 is amended in the last sentence of paragraph (a) to replace ''52.107(e) and (f)'' with ''52.107(f) and (g).''

16. Section 52.107 is amended to redesignate paragraphs (c) through (f) as (d) through (g) and to add paragraph (c) to read as follows:

52.107 Provisions and clauses prescribed in Subpart 52.1.

* * * * *

(c) The contracting officer may use the clause at 52.252–7, Solicitation Provisions and Clauses Accessible Electronically, to satisfy the requirements in 52.102(c).

* * * * *

52.213–1 [Amended]

17. Section 52.213–1 is amended in the introductory text to replace ''13.305'' with ''13.308–4.''

52.213–2 [Amended]

18. Section 52.213–2 is amended in the introductory text to replace ''13.507(b)'' with ''13.304–5(b)''.

52.213–3 [Amended]

19. Section 52.213–3 is amended in the introductory text to replace ''13.507(c)'' with ''13.304–5(c)''.

20. Section 52.213–XX is added to read as follows:

52.213–XX Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in 13.306, insert the following clause:

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (XXX 1996)

(a) The Contractor shall comply with the following clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or executive order:

(i) 52.222–3, Convict Labor (APR 1984) (E.O. 11755).

(ii) 52.233–3, Protest After Award (OCT 1995) (31 U.S.C. 3553 and 40 U.S.C. 759).

(2) Listed below are additional clauses that also apply:

(i) 52.225–11, Restrictions on Certain Foreign Purchases (MAY 1992).

(ii) 52.232–1, Payments (APR 1984).

(iii) 52.232–8, Discounts for Prompt Payment (APR 1989).

(iv) 52.232–11, Extras (APR 1984).

(v) 52.232–25, Prompt Payment (MAR 1984).

(vi) 52.232–28, Electronic Funds Transfer Payment Methods (APR 1989).

(vii) 52.233–1, Disputes (OCT 1995).

(viii) 52.253–1, Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or executive orders:

(i) 52.222–20, Walsh-Healey Public Contracts Act (APR 1984) (41 U.S.C. 35–45) (Applies to supply contracts over $10,000 in the U.S).

(ii) 52.222–26, Equal Opportunity (APR 1984) (E.O. 11246) (Applies to contracts over $10,000).

(iii) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984) (38 U.S.C. 4212) (Applies to contracts over $10,000).

(iv) 52.222–36, Affirmative Action for Handicapped Workers (APR 1984) (29 U.S.C. 793) (Applies to contracts over $2,500).

(v) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988) (38 U.S.C. 4212) (Applies to contracts over $10,000).

(vi) 52.222–41, Service Contract Act of 1965, as amended (MAY 1989) (41 U.S.C. 351 *et seq.*) (Applies to service contracts over $2,500).

(vii) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (MAY 1989) (41 U.S.C. 351 *et seq.*).

(viii) 52.225–3, Buy American Act—Supplies (JAN 1994) (41 U.S.C. 10) (Applies to supplies and services involving the furnishing of supplies unless one or more of the circumstances in 25.109(e) apply).

(ix) 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (JAN 1996) (41 U.S.C. 10 and Pub. L. 103–187) (Applies to supplies if the contract was not set aside for small business concerns and was subject to NAFTA (see 25.402(a)(3) (ii) and 25.403(b)).

(2) Listed below are additional clauses that may apply:

(i) 52.209–6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JULY 1995) (Applies to contracts over $25,000).

(ii) 52.247–29, F.o.b. Origin (JUN 1988) (Applies to supplies if delivery is f.o.b. origin).

(iii) 52.247–34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *52.252–2, Clauses Incorporated by Reference (XXX 1996).* This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

_____

_____

(Insert one or more Internet addresses)

(d) 52.244–6, Subcontracts for Commercial Items and Commercial Components (OCT 1995).

(1) *Definitions.*

''Commercial item'', as used in this clause, has the meaning contained in the clause at 52.202–1, Definitions.

''Subcontract'', as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(2) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(3) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(a) 52.222–26, Equal Opportunity (E.O. 11246);

(b) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(c) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(d) 52.247–64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(4) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(e) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

21. Section 52.252–1 is revised to read as follows:

52.252–1 Solicitation Provisions Incorporated by Reference.

As prescribed in 52.107(a), insert the following provision:

Solicitation Provisions Incorporated by Reference (XXX 1996)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

_____

_____

(Insert one or more Internet addresses)

(End of provision)

22. Section 52.252–2 is revised to read as follows:

52.252–2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause:

Clauses Incorporated by Reference (XXX 1996)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

_____

_____

(Insert one or more Internet addresses)

(End of clause)

23. Section 52.252–XX is added to read as follows:

52.252–XX Agency and FAR Provisions and Clauses Accessible Electronically.

As prescribed in 52.107(c), insert the following clause:

Agency and FAR Provisions and Clauses Accessible Electronically (XXX 1996)

(a) This solicitation incorporates the provisions and clauses listed below by reference, with the same force and effect as if they were given in full text. The offeror is cautioned that the listed provisions and clauses may include blocks that must be completed by the offeror and submitted with the quote or offer. In lieu of submitting the full text of those provisions/clauses, the offeror may identify the provision/clause by paragraph identifier and provide the appropriate information with its quote or offer.

(b) Upon request, the Contracting Officer will make their full text available. Also, the full text of a provision or clause may be accessed electronically at this/these address(es):

_____

_____

(Insert one or more Internet addresses)

(c) Provisions that must be completed by the offeror:

_____

_____

_____

(d) Other provisions and clauses incorporated by reference:

_____

_____

_____

(End of clause)

PART 53—FORMS

24. Section 53.213 is revised to read as follows:

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, OF's 336, 347, 348).

The following forms are prescribed as stated below for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *SF 18 (REV 6/95), Request for Quotations, or SF 1449 (10/95 Ed.), Solicitation/Contract/Order for Commercial Items.* SF 18 prescribed in 53.215–1(a) or SF 1449 prescribed in 53.212, (or approved agency forms/automated formats) shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.309(b).

(b) *SF 30 (REV 10/83), Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.309(c).

(c) *SF 44 (REV 10/83), Purchase Order Invoice Voucher.* SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.309(d).

(d) *SF 1165 (6/83 Ed.), Receipt for Cash-Subvoucher.* SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.309(e).

(e) *OF 336 (4/86 Ed.), Continuation sheet.* OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 13.309(c).

(f) *SF 1449 (10/95 Ed.), Solicitation/Contract/Order for Commercial Items,* prescribed in 53.212, *OF 347 (REV 6/95), Order for Supplies or Services, and OF 348 (10/83 Ed.), Order for Supplies or Services—Schedule Continuation.* SF 1449, OF's 347 and 348 (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.309.

(2) To establish blanket purchase agreements (BPA's), as specified in 13.305–2(e), and to make purchases under BPA's, as specified in 13.305–4(e).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this regulation (e.g., see 5.503(a)(2), 8.405–2, 36.701(c), and 51.102(e)(3)(ii)).

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Part III

Department of Housing and Urban Development

24 CFR Parts 27 and 29

Streamlining Multifamily and Single Family Nonjudicial Foreclosure Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 27 and 29

[Docket No. FR–4110–F–01]

RIN 2501–AC29

Office of the Secretary; Multifamily and Single Family Nonjudicial Foreclosure Procedures Streamlining

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule is a part of HUD's regulatory reinvention initiative. It combines the current rules for multifamily and single family nonjudicial foreclosure at 24 CFR parts 27 and 29, respectively, into separate subparts of part 27, thereby eliminating a CFR part. In addition, this rule streamlines the multifamily requirements in the current part 27, which repeats substantial portions of the authorizing statute, and removes certain single family requirements in the current part 29 that are more restrictive than the authorizing statute.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: With respect to Single Family Housing: Bruce S. Albright, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 9240, Washington, DC 20410, (202) 708–0080. A telecommunications device for the hearing impaired (TTY) is available at (202) 708–3259. (These are not toll-free numbers.)

With respect to Multifamily Housing: Herbert Goldblatt, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 10184, Washington, DC 20410, (202) 708–3200. A telecommunications device for the hearing impaired (TTY) is available at (202) 708–3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. General Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the Nonjudicial Foreclosure of Multifamily Mortgages at 24 CFR part 27 can be improved and streamlined by eliminating unnecessary provisions. The regulations for Nonjudicial Foreclosure of Single Family Mortgages at 24 CFR part 29 were already issued in streamlined form in a final rule published on November 15, 1995 (60 FR 57489). The Department has determined that these single family provisions may appropriately be consolidated with the multifamily provisions as a separate subpart in 24 CFR part 27. This rule also removes certain single family requirements, as explained below in this preamble, that are more restrictive than the authorizing statute.

The combined statutory and regulatory procedures for conducting nonjudicial foreclosures have been placed in appendices to this final rule. Appendix A provides a Guide for the multifamily procedures; Appendix B provides a Guide for the Single Family provisions. The final rule will be codified in the Code of Federal Regulations; the appendices will not be codified. However, the appropriate appendix will be included in information to be provided to foreclosure commissioners, and which will be available to the public. HUD is striving to keep communications about requirements as clear, simple and timely as possible, and the Guides in the appendices present such a format.

II. Multifamily Rule Changes

Several provisions in the multifamily nonjudicial foreclosure regulations repeat statutory language from the Multifamily Mortgage Foreclosure Act of 1981 (the Act) (12 U.S.C. 3701 *et seq.*). It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this rule will remove repetitious statutory language and, where appropriate, replace it with a citation to the specific statutory section.

Also being deleted from the regulatory text of part 27 is language that is only advisory, such as the list of examples of terms which the Secretary may require the purchaser to agree to in the current § 27.20(c).

III. Single Family Rule Changes

The single family requirements in the current part 29 have already been streamlined in a final rule published on November 15, 1995 (60 FR 57484). These requirements are moved in this final rule to become subpart B of part 27, and part 29 is removed.

As a result of the initial use of this new authority to foreclose mortgages by nonjudicial procedures, the Department has noted three areas where the regulations at 24 CFR §§ 29.103(b)(2), 29.109(b) and 29.111(a) are more restrictive than the authorizing statute, the Single Family Mortgage Foreclosure Act of 1994 (the Statute), 12 U.S.C. 3751–3768. Because these restrictions present problems for efficient and cost-effective implementation of the Statute, they are being removed. The regulatory provisions in question, discussed below, require inclusion of the description of the property as contained in the security instrument in the Notice of Default and Foreclosure Sale; the presence of the designated foreclosure commissioner at the foreclosure sale; and the service by publication of the Notice of Default and Foreclosure Sale prior to the revised date of an adjourned foreclosure sale.

Property Description in the Notice of Default and Foreclosure Sale

In 12 U.S.C. 3757(4), the Notice of Default and Foreclosure Sale is to include, among other items, ''* * * the street address or a description of the location of the property, *and a description of the security property sufficient to identify the property to be sold.*'' [Underlining provided.] The provisions of the existing regulation on this point, at 24 CFR 29.103(b)(2), are more restrictive than the Statute. The regulatory provisions state that the Notice of Default and Foreclosure Sale must contain, among other things, ''[t]he legal description of the security property *as contained in the mortgage agreement.*'' [Underlining provided.] HUD has found that in some jurisdictions, the description contained in the security instrument can be very lengthy, in fact, much longer than would be necessary to sufficiently identify the property to be sold at the foreclosure sale. Requiring an unnecessarily lengthy legal description can, in some instances, result in additional expense in publishing the Notice of Default and Foreclosure Sale, resulting in increased costs to the insurance funds.

In order to correct this situation, § 29.103(b)(2) of the existing rule is revised at § 27.103(b)(2) of this rule to conform the regulation to the less restrictive language in the statute.

Presence of the Foreclosure Commissioner at the Sale

While section 369B(b) of the Multifamily Housing Mortgage Foreclosure Act of 1981 (12 U.S.C. 3710), pertaining to the conduct of the sale, specifically requires the attendance of the foreclosure commissioner at the foreclosure sale, the provisions of the

Single Family Mortgage Foreclosure Act of 1994 governing the conduct of the sale are silent on attendance by the commissioner at the sale, *see* 12 U.S.C. 3760. Furthermore, Section 3760(b)(1)(C) of 12 U.S.C. specifically provides that ''The foreclosure commissioner may serve as auctioneer, or, in accordance with regulations of the Secretary, may employ an auctioneer to be paid from the commission provided for in section 3761(5).'' At section 3761(2) of 12 U.S.C., the statutory authority governing foreclosure costs provides for the payment of costs arising from ''[m]ileage * * * for posting notices and *for the foreclosure commissioner's or auctioneer's attendance at the sale * * *.*'' [Underlining provided.]

The regulations at 24 CFR 29.109(b) presently provide that the foreclosure commissioner or, an employee of the commissioner, if the commissioner is not a natural person, must attend the foreclosure sale. This has been found to be restrictive in situations where a sole single family property is a great distance from a foreclosure commissioner's location. This results in the commissioner having to spend an inordinate amount of time and travel expense in order to personally attend the sale or, in the alternative, it results in the unavailability of foreclosure commissioners to accept such case referrals. The regulation is therefore amended in this rule by not including the language of § 29.109(b).

Service by Publication of Notice of an Adjourned Foreclosure Sale

The Statute at 12 U.S.C. 3760(c)(2) requires service by publication and mailing of the revised Notice of Default and Foreclosure Sale when a sale is adjourned to a later date, and permits publication to be made on any of three separate days before the revised date of foreclosure sale. The current section § 29.111(a) requires publication of the Notice of Default and Foreclosure Sale to be made on any of three consecutive days prior to the revised date of foreclosure sale so long as the first publication is made at least seven days before the date to which the sale has been adjourned. This requirement could in some circumstances be impossible to comply with, because it does not take into account cases in which there are no daily newspapers of general circulation that would permit publication on three consecutive days. The requirement in § 29.111(a) for the first publication to be made at least seven days before the sale is also not part of the Statute, which only makes service by mail subject to the seven days requirement.

This rule, at § 27.111(a), returns to the statutory language permitting publication to be made on any of three separate days before the revised date of foreclosure sale. In addition, to give full implementation to the Statute, which allows adjournment of the foreclosure sale for ''not less than 9 and not more than 31 days,'' this rule takes into account cases in which the frequency of publication of newspapers of general circulation would not permit publication on three separate days before the date to which the sale has been adjourned. To avoid the frustration of the statutory provision that permits adjournments of not less than 9 days, this rule provides that if there is no newspaper of general circulation that would permit publication on any of three separate days before the revised date of foreclosure sale, the Notice of Default and Foreclosure Sale must be posted, not less than nine days before the date to which the sale has been adjourned, at the courthouse of any county or counties in which the property is located, and at the place where the sale is to be held. This provision is modeled on the exception to publication by posting provision in the Statute at 12 U.S.C. 3758(3)(B), and avoids such a Statute-frustrating result as not being able to adjourn a foreclosure sale for less than 21 days in an area where a newspaper is published only weekly.

IV. Findings and Certifications

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, local and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions. It does not change the environmental review procedures or the physical impact of the program or the projects assisted under the regulations being amended.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes that would affect the relationship between the Federal Government and State and local governments will result from this rule.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects

24 CFR Part 27

Administrative practice and procedure, Loan programs—housing and community development.

24 CFR Part 29

Administrative practice and procedure, Loan programs—housing and community development.

Accordingly, under the authority 420 U.S.C. 3535(d) subtitle A of title 24 of the Code of Federal Regulations is amended as follows:

1. Part 27 is revised to read as follows:

PART 27—NONJUDICIAL FORECLOSURE OF MULTIFAMILY AND SINGLE FAMILY MORTGAGES

Subpart A—Nonjudicial Foreclosure of Multifamily Mortgages

Subpart B—Nonjudicial Foreclosure of Single Family Mortgages

Authority: 12 U.S.C. 1715b, 3701–3717, 3751–3768; 42 U.S.C. 1452b, 3535(d).

Subpart A—Nonjudicial Foreclosure of Multifamily Mortgages

§ 27.1 Purpose.

The purpose of this subpart is to implement requirements for the administration of the Multifamily Mortgage Foreclosure Act of 1981 (the Act) (12 U.S.C. 3701–3717), that clarify, or are in addition to, the requirements contained in the Act, which are not republished here and must be consulted in conjunction with the requirements of this subpart. The Act creates a uniform Federal remedy for foreclosure of multifamily mortgages. Under a delegation of authority published on February 5, 1982 (47 FR 5468), the Secretary has delegated to the HUD General Counsel his powers under the Act to appoint a foreclosure commissioner or commissioners and to substitute therefor, to fix the compensation of commissioners, and to promulgate implementing regulations.

§ 27.2 Scope and applicability.

(a) Under the Act and this subpart, the Secretary may foreclose on any defaulted Secretary-held multifamily mortgage encumbering real estate in any State. The Secretary may use the provisions of these regulations to foreclose on any multifamily mortgage regardless of when the mortgage was executed.

(b) The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted multifamily mortgages, including judicial foreclosure in Federal court and nonjudicial foreclosure under State law. This subpart applies only to foreclosure procedures authorized by the Act and not to any other foreclosure procedures the Secretary may use.

§ 27.3 Definitions.

The definitions contained in the Act (at 12 U.S.C. 3702) shall apply to this subpart, in addition to and as further clarified by the following definitions. As used in this subpart:

General Counsel means the General Counsel of the Department of Housing and Urban Development;

Multifamily mortgage does not include a mortgage covering a property on which there is located a one- to four-family residence, except when the one- to four-family residence is subject to a mortgage pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), or section 811 (42 U.S.C. 8013) of the National Affordable Housing Act. The definition of multifamily mortgage also includes a mortgage taken by the Secretary in connection with the previous sale of the project by the Secretary (purchase money mortgage).

§ 27.5 Prerequisites to foreclosure.

Before commencement of a foreclosure under the Act and this subpart, HUD will provide to the mortgagor an opportunity informally to present reasons why the mortgage should not be foreclosed. Such opportunity may be provided before or after the designation of the foreclosure commissioner but before service of the notice of default and foreclosure.

§ 27.10 Designation of a foreclosure commissioner.

(a) When the Secretary determines that a multifamily mortgage should be foreclosed under the Act and this subpart, the General Counsel will select and designate one or more foreclosure commissioners to conduct the foreclosure and sale. The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the General Counsel, and the execution of a designation pursuant to paragraph (b) of this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the General Counsel.

(b) After selection of a foreclosure commissioner, the General Counsel shall designate the commissioner in writing to conduct the foreclosure and sale of the particular multifamily mortgage. The written designation shall be duly acknowledged and shall state the name and business or residential address of the commissioner and any other information the General Counsel deems necessary. The designation shall be effective upon execution by the General Counsel or his designate. Upon receipt of the designation, the commissioner shall demonstrate acceptance by signing the designation and returning a signed copy to the General Counsel.

(c) The General Counsel may at any time, with or without cause, designate a substitute commissioner to replace a previously designated commissioner. Designation of a substitute commissioner shall be in writing and shall contain the same information and be made effective in the same manner as the designation of the original commissioner. Upon designation of a substitute commissioner, the substitute commissioner shall serve a copy of the written notice of designation upon the persons listed at sections 369(1) (A) through (C) of the Act (12 U.S.C. 3708(1) (A) through (C)) either by mail, in accordance with section 369(1) of the Act (12 U.S.C. 3708(1)), except that the time limitations in that section will not apply, or by any other manner which in the substitute commissioner's discretion is conducive to giving timely notice of substitution.

§ 27.15 Notice of default and foreclosure sale.

(a) Within 45 days after accepting his or her designation to act as commissioner, the commissioner shall commence the foreclosure by serving a Notice of Default and Foreclosure Sale.

(b) The Notice of Default and Foreclosure Sale shall contain the following information:

(1) The Notice shall state that all deposits and the balance of the purchase price shall be paid by certified or cashier's check. The Notice shall state that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

(2) Any terms and conditions to which the purchaser at the foreclosure sale must agree under § 27.20. The Notice need not describe at length each and every pertinent term and condition, including any required use agreements and deed covenants, if it describes these terms and conditions in a general way and if it states that the precise terms will be available from the commissioner upon request.

(c) The Notice need not be mailed to mortgagors who have been released from all obligations under the mortgage.

(d) In deciding which newspaper or newspapers to select as general circulation newspapers for purposes of publication of the required notice, the commissioner need not select the newspaper with the largest circulation.

(e) In addition to Notice posting requirements included in the Act, the Notice shall also be posted in the project office and in such other appropriate conspicuous places as the commissioner deems appropriate for providing notice to all tenants. Posting shall not be required if the commissioner in his or her discretion finds that the act of posting is likely to lead to a breach of the peace or may result in the increased risk of vandalism or damage to the property. Any such finding will be made in writing. Entry on the premises by the commissioner for the purpose of posting shall be privileged as against all other persons.

(f) When service of the Notice of Default and Foreclosure Sale is made by mail, the commissioner shall at the same time and in the same manner serve a copy of the instrument by which the General Counsel, under § 27.10(b), has designated him or her to act as commissioner.

(g) At least 7 days before the foreclosure sale, the commissioner will record both the instrument designating him or her to act as commissioner and the Notice of Default and Foreclosure Sale in the same office or offices in which the mortgage was recorded.

§ 27.20 Conditions of foreclosure sale.

(a) The requirements of section 367(b)(2)(A) of the Act (12 U.S.C. 3706(b)(2)(A)) apply if a majority of the residential units in a property subject to foreclosure sale pursuant to the Act and this subpart are occupied by residential tenants either on the date of the foreclosure sale or on the date on which the General Counsel designates the foreclosure commissioner.

(b) Terms which the Secretary may find appropriate to require pursuant to section 367(b) of the Act (12 U.S.C. 3706(b)), and such other provisions of law as may be applicable, may include provisions relating to use and ownership of the project property, tenant admission standards and procedures, rent schedules and increases, and project operation and maintenance. In determining terms which may be appropriate to require, the Secretary shall consider:

(1) The history of the project, including the purposes of the program under which the mortgage insurance or assistance was provided, and any other program of HUD under which the project was developed or otherwise assisted and the probable causes of project failure resulting in its default;

(2) A financial analysis of the project, including an appraisal of the fair market value of the property for its highest and best use;

(3) A physical analysis of the project, including the condition of the structure and grounds, the need for rehabilitation or repairs, and the estimated costs of any such rehabilitation or repairs;

(4) The income levels of the occupants of the project;

(5) Characteristics, including rental levels, of comparable housing in the area, with particular reference to whether current conditions and discernible trends in the area fairly indicate a likelihood that, for the foreseeable future after foreclosure and sale, the project will continue to provide rental or cooperative housing and market rentals obtainable in the project will be affordable by low- or moderate-income persons;

(6) The availability of or need for rental housing for low- and moderate-income persons in the area, including actions being taken or projected to be taken to address such needs and the impact of such actions on the project;

(7) An assessment of the number of occupants who might be displaced as a result of the manner of disposition;

(8) The eligibility of the occupants of the property for rental assistance under any program administered by HUD and the availability of funding for such assistance if necessary in order that the units occupied by such occupants will remain available to and affordable by such persons, or if necessary in order to assure the financial feasibility of the project after foreclosure and sale subject to the terms to be required by the Secretary; and

(9) Such other factors relating to the project as the Secretary shall consider appropriate.

(c) Terms which the Secretary may require to be agreed to by the purchaser pursuant to section 367(b) of the Act (12 U.S.C. 3706(b)) shall generally not be more restrictive, or binding for a longer duration, than the terms by which the mortgagor was bound prior to the foreclosure. For example: If the mortgage being foreclosed was held by the Secretary under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b), any terms required by the Secretary pursuant to this section shall be in effect no longer than five years after the completion of the rehabilitation work funded by the section 312 loan. No terms shall be required pursuant to this section if the foreclosure sale occurs more than five years after the completion of such rehabilitation work (signified by the due date for commencement of amortization payments in the section 312 loan note).

(d) The limitation contained in paragraph (c) of this section applies only to such terms as the Secretary may require the purchaser to agree to, as a condition and term of the sale, under paragraph (a) of this section. Nothing contained in paragraph (c) of this section shall prevent the Secretary and the purchaser from entering into a subsidy agreement under any program administered by the Secretary containing terms binding upon either party which are longer in duration than would be permitted to be required by paragraph (c) of this section.

(e) Any terms required by the Secretary to be agreed to by the purchaser as a condition and term of sale under this section and section 367(b) of the Act (12 U.S.C. 3706(b)) shall be embodied in a use agreement to be executed by the Secretary and the purchaser. Such terms also may be included, or referred to, in appropriate covenants contained in the deed to be delivered by the foreclosure commissioner under § 27.45. Terms required by the Secretary pursuant to this section shall be stated or described in the Notice of Default and Foreclosure Sale under § 27.15.

§ 27.25 Termination or adjournment of foreclosure sale.

(a) Before withdrawing the security property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)), the commissioner shall notify the Secretary of the proposed withdrawal by telephone or telegram and shall provide the Secretary with a written statement of

the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have 10 days within which to demonstrate orally or in writing why the security property should not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the commissioner. If the Secretary receives the commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale shall be served as described in section 369B(c) of the Act (12 U.S.C. 3710(c)).

(b) The commissioner may not withdraw the security property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)) more than once unless the Secretary consents in writing to such withdrawal.

(c) The commissioner shall, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(d) If upon application by the mortgagor, the commissioner refuses to withdraw the property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)), the commissioner shall provide the mortgagor and the Secretary with a written statement of the reasons for the refusal.

§ 27.30 Conduct of the sale.

(a) The commissioner shall accept written one-price sealed bids from any party including the Secretary so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner will announce the amount of the high bid and the name of the successful bidder before the close of the sale.

(b) Relatives of the commissioner who may not bid at the foreclosure sale include parents, siblings, spouses and children. Related business entities which may not bid include entities or concerns whose relationship with the commissioner at the time the commissioner is designated is such that, directly or indirectly, one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct, the offensive conduct of the other concern. Business concerns are also affiliates of each other when a third party is similarly situated with respect to both concerns.

(c) If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located.

§ 27.35 Foreclosure costs.

Pursuant to section 369C(5) of the Act (12 U.S.C. 3711(5)), a commission to the foreclosure commissioner for the conduct of the foreclosure will be paid in an amount to be determined by the General Counsel. A commission may be allowed to the commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 27.40 Disposition of sale proceeds.

(a) The priority of the Secretary's lien shall be determined by the Federal first-in-time first-in-right rule. State laws affording priority to liens recorded after the mortgage are preempted.

(b) If there is more than one party holding a lien or assessment payable from sales proceeds, the claim of each party holding the same kind of lien or assessment will be given the relative priority to which it would be entitled under the law of the State in which the security property is located.

(c) The commissioner will keep such records as will permit the Secretary to verify the costs claimed under section 369C of the Act (12 U.S.C. 3711), and otherwise to audit the commissioner's disposition of the sale proceeds.

§ 27.45 Transfer of title and possession.

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs listed in sections 369D (1) through (3) of the Act (12 U.S.C. 3712(1) through (3)). If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser upon receipt of the entire purchase price and execution by the Secretary and the purchaser of any use agreement referred to in § 27.20(e). Any covenants reflecting terms required by § 27.20 shall be contained in the commissioner's deed.

(b) Subject to any terms required to be agreed to by § 27.20, any commercial tenant and any residential tenant remaining in possession after the expiration of his or her lease or after the passage of one year, whichever event occurs first, shall be deemed a tenant at sufferance and may be evicted in accordance with applicable State or local law.

§ 27.50 Management and disposition by the Secretary.

When the Secretary is the purchaser of the security property, the Secretary shall manage and dispose of it in accordance with section 203 of the Housing and Community Development Amendments of 1978, as amended, 12 U.S.C. 1701z–11, and in accordance with 24 CFR part 290.

Subpart B—Nonjudicial Foreclosure of Single Family Mortgages

§ 27.100 Purpose, Scope and Applicability.

(a) *Purpose.* The purpose of this subpart is to implement requirements for the administration of the Single Family Mortgage Foreclosure Act of 1994 (the Statute), 12 U.S.C. 3751–3768, that clarify, or are in addition to, the requirements contained in the Statute, which are not republished here and must be consulted in conjunction with the requirements of this subpart.

(b) *Scope.* The Secretary may foreclose on any defaulted single family mortgage described in the Statute regardless of when the mortgage was executed.

(c) *Applicability.* The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted single family mortgages, including judicial foreclosure in State or Federal Court, and nonjudicial foreclosures under State law or any other Federal law. This subpart applies only to foreclosure procedures authorized by the Statute and not to any other foreclosure procedures the Secretary may use.

§ 27.101 Definitions.

The definitions contained in the Statute (at 12 U.S.C. 3752) shall apply to this subpart, in addition to and as further clarified by the following definitions. As used in this subpart:

County means a political subdivision of a State or Territory of the United States, created to aid in the administration of State law for the purpose of local self government, and

includes a parish or any other equivalent subdivision.

Mortgage is as defined in the Statute except that the reference to property as ''(real, personal or mixed)'' means ''any property (real or mixed real and personal).''

Mortgage agreement is as defined in the Statute, and also means any other similar instrument or instruments creating the security interest in the real estate for the repayment of the note or debt instrument.

Mortgagor is as defined in the Statute, except that the reference to ''trustee'' means ''trustor.''

Record; Recorded means to enter or entered in public land record systems established under State statutes for the purpose of imparting constructive notice to purchasers of real property for value and without knowledge, and includes ''register'' and ''registered'' in the instance of registered land, and ''file'' and its variants in the context of entering documents in public land records.

Secretary means the Secretary of Housing and Urban Development, acting by and through any authorized designee exclusive of the foreclosure commissioner.

Security Property is as defined in the statute except that the reference to property as ''(real, personal or mixed)'' means ''any property (real or mixed real and personal).''

§ 29.102 Designation of foreclosure commissioner and substitute commissioner.

(a) The Secretary may designate foreclosure commissioners, including substitute commissioners, as set forth in the Statute.

(b) The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the Secretary. The execution of a designation pursuant to this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the Secretary. The designation is effective upon execution.

§ 27.103 Notice of default and foreclosure sale.

(a) The foreclosure commissioner shall commence the foreclosure under the procedures set forth in the Statute.

(b) The Notice of Default and Foreclosure Sale (Notice) shall include, in addition to the provisions as required by the Statute:

(1) The foreclosure commissioner's telephone number;

(2) A description of the security property sufficient to identify the property to be sold;

(3) The date the mortgage was recorded;

(4) Identification of the failure to make payment, including the entire amount delinquent as of a date specified, a statement generally describing the other costs that must be paid if the mortgage is to be reinstated, the due date of the earliest principal installment payment remaining wholly unpaid as of the date on which the notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness; and

(5) The bidding and payment requirements for the foreclosure sale, including the time and method of payment of the balance of the foreclosure purchase price, that all deposits and the balance of the purchase price shall be paid by certified or cashier's check, and that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

§ 27.105 Service of Notice of Default and Foreclosure Sale.

(a) The Notice of Default and Foreclosure Sale shall be served in accordance with the provisions of the Statute. When notice is sent by mail, multiple mailings are not required to be sent to any party with multiple capacities, e.g., an original mortgagor who is the security property owner and lives in one of the units. The date of the receipt for the postage paid for the mailing may serve as proof of the date of mailing of the notice.

(b) Notice need not be mailed to any mortgagors who have been released from all obligations under the mortgage.

§ 27.107 Presale reinstatement.

(a) The foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only in accordance with the provisions of the Statute and as more fully provided in paragraphs (b) and (c) of this section in regard to presale reinstatements.

(b) To obtain a presale reinstatement in cases involving a monetary default, there must be tendered to the foreclosure commissioner before public auction is completed all amounts which would be due under the mortgage agreement if payments under the mortgage had not been accelerated and all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in the Statute, and the foreclosure commissioner must find that there are no nonmonetary defaults; provided, however, that the Secretary may refuse to cancel a foreclosure sale pursuant to this subparagraph if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to the Statute and this subpart or otherwise, to be canceled by curing a default.

(c) To obtain a presale reinstatement in cases involving a nonmonetary default:

(1) The foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, must find that all nonmonetary defaults are cured and that there are no monetary defaults; and

(2) There must be tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding all amounts which would be due under the mortgage agreement if the mortgage payments had been accelerated), including all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment would be made from the proceeds of foreclosure as provided in the Statute.

(d) Before withdrawing the security property from foreclosure, the foreclosure commissioner shall notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and shall also provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have ten (10) days in which to demonstrate why the security property should not be withdrawn from foreclosure, and if the Secretary makes this demonstration, the property shall not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be adjourned for 14 days, during which time it may be cancelled. Notice of the re-scheduled sale, if any, shall be served as described in § 27.111.

§ 27.109 Conduct of sale.

(a) The foreclosure sale shall be conducted in a manner and at a time and place as identified in the Notice of Default and Foreclosure Sale and in

accordance with the provisions of the Statute.

(b) In addition to bids made in person at the sale, the foreclosure commissioner shall accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The foreclosure commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements in the Notice of Default and Foreclosure Sale. Before the close of the sale the commissioner shall announce the amount of the high bid and the name of the successful bidder. If the successful bidder fails to comply with the terms of the sale, the HUD Field Office representative will provide instructions to the commissioner about offering the property to the second highest bidder, or having a new sale, or other instruction at the discretion of the HUD representative.

(c) *Prohibited participants.* Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, the offensive conduct of the other entity.

(d) *Auctioneers.* If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located.

§ 27.111 Adjournment or cancellation of sale.

(a) The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale in accordance with the provisions of the Statute. The publication of the Notice of Default and Foreclosure Sale, revised pursuant to the Statute, may be made on any of three separate days before the revised date of foreclosure sale. If there is no newspaper of general circulation that would permit publication on any of three separate days before the revised date of foreclosure sale, the Notice of Default and Foreclosure Sale must be posted, not less than nine days before the date to which the sale has been adjourned, at the courthouse of any county or counties in which the property is located, and at the place where the sale is to be held. The commissioner must also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(b) When a substitute commissioner is designated by the Secretary to replace a previously designated foreclosure commissioner, the sale shall continue without prejudice unless the substitute commissioner finds, in that commissioner's sole discretion, that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding shall be in writing. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel or adjourn the sale.

§ 27.113 Foreclosure costs.

A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 27.115 Disposition of sales proceeds.

The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed, and otherwise to enable the Secretary to audit the foreclosure commissioner's disposition of the sale proceeds.

§ 27.117 Transfer of title and possession.

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs of tax liens and prior liens, as set forth in 12 U.S.C. 3762(a)(2) and (a)(3). If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(b) The register of deeds or other appropriate official in the county where the property is located shall, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the foreclosure commissioner for recordation. The instruments to be accepted shall include, but not be limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations required under the Statute (12 U.S.C. 3764) in an affidavit or an addendum to the deed, the affidavit or addendum shall be accepted along with the deed for recordation. The Clerk of the Court or other appropriate official shall cancel all liens as requested by the foreclosure commissioner.

§ 27.119 Redemption rights.

Only for purposes of redemption rights under the Statute, a foreclosure shall be considered completed upon the date and at the time of the foreclosure sale.

§ 27.121 Record of foreclosure and sale.

The statements regarding the foreclosed mortgage required to establish a sufficient record shall include the date the mortgage was recorded. The statements regarding the service of the Notice of Default and Foreclosure Sale shall include the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed, the name of the newspaper in which the Notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.

§ 27.123 Deficiency judgment.

If the price at which the security property is sold at the foreclosure sale is less than the unpaid balance of the debt secured by such property after disposition of sale proceeds in accordance with the order of priority provided under the Statute, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any and all debtors to recover the deficiency, unless such an action is specifically prohibited by the mortgage.

PART 29—[REMOVED]

2. Part 29 is removed.

Dated: August 28, 1996.

Henry G. Cisneros,

Secretary.

Note: The following appendices A and B will not be codified in title 24 of the Code of Federal Regulations.

Appendix A: Nonjudicial Foreclosure of Multifamily Mortgages—Guide

Sec.

1. Purpose

The purpose of this guide is to present, in a single document, the statutory and regulatory requirements of the Multifamily Mortgage Foreclosure Act of 1981 (the Act) (12 U.S.C. 3701–3717). Although it presents the regulatory and statutory requirements in a combined format, this guide is a secondary source for these requirements. The Code of Federal Regulations (CFR), at 24 CFR part 27, subpart A, is the primary, governing source for regulatory requirements, and the Act is the primary, governing source for statutory requirements. Any reference in this Guide to the provisions of the Act includes the requirements of 24 CFR part 27, subpart A.

The Act creates a uniform Federal remedy for foreclosure of multifamily mortgages. Under a delegation of authority published on February 5, 1982 (47 FR 5468), the Secretary has delegated to the HUD General Counsel his powers under the Act to appoint a foreclosure commissioner or commissioners and to substitute therefor, to fix the compensation of commissioners, and to promulgate implementing regulations.

2. Scope and Applicability

(a) Under the Act, the Secretary may foreclose on any defaulted Secretary-held multifamily mortgage encumbering real estate in any State, regardless of when the mortgage was executed.

(b) The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted multifamily mortgages, including judicial foreclosure in Federal court and nonjudicial foreclosure under State law. The requirements described in this Guide apply only to foreclosure procedures authorized by the Act and not to any other foreclosure procedures the Secretary may use.

3. Definitions

As used in this Guide:

County means county as defined in section 2 of title I, United States Code.

General Counsel means the General Counsel of the Department of Housing and Urban Development.

Mortgage means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in property, real, personal or mixed, or any interest in property including leaseholds, life estates, reversionary interests, and any other estates under applicable State law, is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien, for the purpose of securing the payment of money or the performance of an obligation.

Mortgage agreement means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or instrument or instruments creating the mortgage, including any instruments incorporated by reference therein (including any applicable regulatory agreement), and any instrument or agreement amending or modifying any of the foregoing.

Mortgagor means the obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not personally liable on the mortgage debt.

Multifamily mortgage means a mortgage held by the Secretary, covering any property pursuant to:

(1) Section 608 of the National Housing Act (12 U.S.C. 1743);

(2) Section 801 of the National Housing Act (12 U.S.C. 1748);

(3) Title II of the National Housing Act (12 U.S.C. 1707–1715z-20);

(4) Title X of the National Housing Act (12 U.S.C. 1749aa);

(5) Section 312 of the Housing Act of 1964, as it existed immediately before its repeal by section 289 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1452b);

(6) Section 202 of the Housing Act of 1959, as it existed immediately before its amendment by section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q);

(7) Section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q); and

(8) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).

Multifamily mortgage does not include a property on which there is located a one- to four-family residence, except when the one- to four-family residence is subject to a mortgage pursuant to section 202 of the Housing Act of 1959, or section 811 of the National Affordable Housing Act. The definition of multifamily mortgage also includes a mortgage taken by the Secretary in connection with the previous sale of the project by the Secretary (purchase money mortgage).

Person includes any individual, group of individuals, association, partnership, corporation, or organization.

Record and recorded include register and registered in the instance of registered land.

Secretary means the Secretary of Housing and Urban Development.

Security property means the property, real, personal or mixed, or an interest in property, including leaseholds, life estates, reversionary interest and any other estates under applicable State law, together with fixtures and other interests subject to the lien of the mortgage under applicable State law.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, and Indian tribes as defined by the Secretary.

4. Prerequisites to Foreclosure

(a) The Secretary may commence foreclosure under the Act upon the breach of a covenant or condition in the mortgage agreement for which foreclosure is authorized under the mortgage. No such foreclosure may be commenced unless any previously pending proceeding, judicial or nonjudicial, separately instituted by the Secretary to foreclose the mortgage in a manner other than under the Act, has been withdrawn, dismissed or otherwise terminated. The Secretary shall not institute any separate foreclosure proceedings, judicial or nonjudicial, during the pendency of a foreclosure pursuant to the Act. Nothing in the Act shall preclude the Secretary from enforcing any right, other than foreclosure, under applicable State law, including any right to obtain a monetary judgment. Nothing in the Act shall preclude the Secretary from foreclosing under the Act where the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State Law or under the mortgage agreement, including, but not limited to the appointment of a receiver; mortgagee-in-possession status; relief under an assignment of rents; or transfer to a nonprofit entity in accordance with section 202 of the Housing Act of 1959 (as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act), or section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(b) Before commencement of a foreclosure under the Act, HUD will provide to the mortgagor an opportunity informally to present reasons why the mortgage should not be foreclosed. Such opportunity may be provided before or after the designation of the foreclosure commissioner but before service of the notice of default and foreclosure.

5. Designation of a Foreclosure Commissioner

(a) When the Secretary determines that a multifamily mortgage should be foreclosed under the Act, the General Counsel will select and designate a foreclosure commissioner to conduct the foreclosure and sale. In order to conduct the foreclosure, the foreclosure commissioner has a nonjudicial power of sale. The commissioner, if a natural person, shall be a resident of the State in which the security property is located. If a natural person is designated as commissioner, he or she shall be designated by name, except if the commissioner is designated in his or her capacity as an official or employee of the State or local government where the security property is located, the designation may be made by title or position instead of by name. If not a natural person, the commissioner must be duly authorized to transact business under the laws of the State in which the security property is located. The commissioner shall be a person who is determined by the General Counsel to be responsible, financially sound, and competent to conduct the foreclosure. The foreclosure commissioner may be an individual, group of individuals, association, partnership, corporation or organization. The method of selection and determination of the

qualifications of the foreclosure commissioner shall be at the discretion of the General Counsel, and the execution of a designation pursuant to paragraph (b) of this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the General Counsel.

(b) After selection of a foreclosure commissioner, the General Counsel shall designate the commissioner in writing to conduct the foreclosure and sale of the particular multifamily mortgage. The written designation shall be duly acknowledged and shall state the name and business or residential address of the commissioner and any other information the General Counsel deems necessary. The designation shall be effective upon execution by the General Counsel or his designate. Upon receipt of the designation, the commissioner shall demonstrate acceptance by signing the designation and returning a signed copy to the General Counsel.

(c) The General Counsel may designate more than one commissioner to foreclose a multifamily mortgage.

(d) The General Counsel may at any time, with or without cause, designate a substitute commissioner to replace a previously designated commissioner. Designation of a substitute commissioner shall be in writing and shall contain the same information and be made effective in the same manner as the designation of the original commissioner. Upon designation of a substitute commissioner, the substitute commissioner shall serve a copy of the written notice of designation upon the persons listed at sections 6.(c) (1) through (3) of this Guide either by mail, in accordance with section 6.(c) of this Guide, except that the time limitations in that section will not apply, or by any other manner which in the substitute commissioner's discretion is conducive to giving timely notice of substitution.

(e) The Secretary shall be the guarantor of payment of any judgment against the foreclosure commissioner for damages based on the commissioner's failure properly to perform the commissioner's duties. As between the Secretary and the mortgagor, the Secretary shall bear the risk of any financial default by the foreclosure commissioner. In the event that the Secretary makes any payment pursuant to this paragraph, the Secretary shall be fully subrogated to the rights satisfied by such payment.

6. Notice of Default and Foreclosure Sale

(a) Within 45 days after accepting his or her designation to act as commissioner, the commissioner shall commence the foreclosure by serving a Notice of Default and Foreclosure Sale.

(b) The Notice of Default and Foreclosure Sale shall contain the following information which, except for paragraphs (b) (2) and (9) of this section, will be supplied to the commissioner by the Secretary.

(1) Name and address of the foreclosure commissioner.

(2) Date of the Notice.

(3) Names of the Secretary, the original mortgagor and the original mortgagee.

(4) A description of the location of the security property, or portion thereof to be sold, which is sufficient to identify it including, if appropriate, the street address.

(5) The date of the mortgage.

(6) The name of the office or offices in which the mortgage is recorded.

(7) The book and page in which the mortgage was recorded or, if appropriate, the mortgage's document or accession number.

(8) A description of the mortgagor's failure to make payment, including the due date of the earliest installment payment remaining wholly unpaid as of the date of the Notice or, if appropriate, of the other default or defaults upon which foreclosure is based; and a statement that the secured debt has been accelerated.

(9) The date, exact time and place of the foreclosure sale. The sale shall not be scheduled for a date less than 30 days after the due date of the earliest unpaid installment or the earliest occurrence of a nonmonetary default. The sale must be scheduled to begin at a time between the hours of 9:00 a.m. and 4:00 p.m. local time on a day other than Sunday or a public holiday as defined by 5 U.S.C. 6103(a) or State law. The sale must be scheduled for (i) a place where real estate foreclosure auctions are customarily held in the county or one of the counties in which the property to be sold is located, or (ii) a courthouse in such a county, or (iii) a site at or on the property to be sold. Sale of property located in more than one county may be held in any one of the counties in which any part of the security property is situated.

(10) A statement that the foreclosure is being conducted in accordance with the Act.

(11) The costs, if any, to be paid by the purchaser upon transfer of title.

(12) The bidding and payment requirements for the foreclosure sale, including the required deposit, the method of deposit, and the time and method of payment for the balance of the purchase price. The Notice shall state that all deposits and the balance of the purchase price shall be paid by certified or cashier's check. The Notice shall state that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

(13) Any terms and conditions to which the purchaser at the foreclosure sale must agree, as listed in section 7 of this Guide. The Notice need not describe at length each and every pertinent term and condition, including any required use agreements and deed covenants, if it describes these terms and conditions in a general way and if it states that the precise terms will be available from the commissioner upon request.

(c) The commissioner shall serve the Notice of Default and Foreclosure Sale upon the following persons in the following manner, and no additional notice shall be required to be served notwithstanding any notice requirements of State or local law:

(1) By certified or registered mail, return receipt requested, sent, at least 21 days before the original scheduled date of the foreclosure sale, to the owner of record of the security property as of 45 days before the original scheduled date of the foreclosure sale. The Notice shall be mailed to the owner at the address shown in the mortgage or to the address of the security property, or, in the commissioner's discretion, to any address believed to be that of the owner; and

(2) By certified or registered mail, return receipt requested, sent, at least 21 days before the original scheduled date of the foreclosure sale, to the original mortgagor and all subsequent mortgagors of record and all other persons who appear on the public record or in the mortgage agreement to be liable for all or part of the mortgage debt. The Notice need not be mailed to mortgagors who have been released from all obligations under the mortgage. The Notice shall be mailed to the mortgagor at the address shown in the mortgage, or to the address of the property, or, in the commissioner's discretion, to any address believed to be that of the mortgagor or mortgagors; and

(3) By certified or registered mail, return receipt requested, sent, at least 10 days before the original scheduled date of the foreclosure sale, to all persons having liens of record on the security property which were placed on record at least 45 days before the scheduled foreclosure sale. The Notice shall be mailed to lien holders at their address of record, or to any address the commissioner believes to be that of the lien holder; and

(4) By publication of a copy of the Notice of Default and Foreclosure Sale once a week during three successive calendar weeks in a newspaper of general circulation in the county or counties in which the security property is located. To the extent practicable, the newspaper or newspapers chosen shall have circulation which is conducive to achieving notice of foreclosure by publication. In deciding which newspaper or newspapers have such circulation, the commissioner need not select the newspaper with the largest circulation. The date of the last publication shall be not less than four nor more than twelve days before the sale date. If there is no newspaper of general circulation in the county or counties in which the security property is located, service shall be made by posting the Notice of Default and Foreclosure Sale in at least three public places in each such county at least 21 days prior to the date of sale. The Notice of Default and Foreclosure Sale which is published pursuant to this paragraph may omit a description of the default, as otherwise required by paragraph (b)(8) of this section, if the commissioner, in his or her discretion, so determines; and

(5) By posting a copy of the Notice of Default and Foreclosure Sale in a prominent place at or near the security property for at least 15 consecutive days before the foreclosure sale. If the property to be sold consists of two or more noncontiguous parcels of land, a copy of the Notice shall be posted in a prominent place on each such parcel. If the property consists of two or more separate buildings, a copy of the Notice shall be posted in a prominent place on each such building. The Notice shall also be posted in the project office and in such other appropriate conspicuous places as the commissioner deems appropriate for providing notice to all tenants. Posting shall not be required if the commissioner in his or her discretion finds that the act of posting is likely to lead to a breach of the peace or may result in the increased risk of vandalism or

damage to the property. Any such finding will be made in writing. Entry on the premises by the commissioner for the purpose of posting shall be privileged as against all other persons.

(d) Service made under paragraphs (c) (1), (2), and (3) of this section is deemed to have been made upon mailing, whether or not the Notice was received and whether or not a return receipt is received or the letter containing the Notice is returned.

(e) When service of the Notice of Default and Foreclosure Sale is made pursuant to paragraph (c) (1), (2), or (3) of this section, the commissioner shall at the same time and in the same manner serve a copy of the instrument by which the General Counsel, under section 5(b) of this Guide, has designated him or her to act as commissioner.

(f) At least 7 days before the foreclosure sale, the commissioner will record both the instrument designating him or her to act as commissioner and the Notice of Default and Foreclosure Sale in the same office or offices in which the mortgage was recorded.

7. Conditions of Foreclosure Sale

(a) If a majority of the residential units in a property subject to foreclosure sale pursuant to the Act are occupied by residential tenants either on the date of the foreclosure sale or on the date on which the General Counsel designates the foreclosure commissioner, the Secretary shall require, as a condition and term of the sale, that the purchaser at a foreclosure sale (other than the Secretary) agree to continue to operate the project in accordance with the terms of the program under which the mortgage insurance or assistance was provided, or any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale as the Secretary shall find appropriate. If a majority of the residential units are not so occupied, at either such time, the Secretary, in his or her discretion, may require as a condition and term of the sale, that the purchaser (other than the Secretary) agree to continue to operate the property in accordance with such terms described above as the Secretary shall find appropriate.

(b) Terms which the Secretary may find appropriate to require pursuant to the Act and such other provisions of law as may be applicable may include provisions relating to use and ownership of the project property, tenant admission standards and procedures, rent schedules and increases, and project operation and maintenance. In determining terms which may be appropriate to require, the Secretary shall consider:

(1) The history of the project, including the purposes of the program under which the mortgage insurance or assistance was provided, and any other program of HUD under which the project was developed or otherwise assisted and the probable causes of project failure resulting in its default;

(2) A financial analysis of the project, including an appraisal of the fair market value of the property for its highest and best use;

(3) A physical analysis of the project, including the condition of the structure and grounds, the need for rehabilitation or repairs, and the estimated costs of any such rehabilitation or repairs;

(4) The income levels of the occupants of the project;

(5) Characteristics, including rental levels, of comparable housing in the area, with particular reference to whether current conditions and discernible trends in the area fairly indicate a likelihood that, for the foreseeable future after foreclosure and sale, the project will continue to provide rental or cooperative housing and market rentals obtainable in the project will be affordable by low- or moderate-income persons;

(6) The availability of or need for rental housing for low- and moderate-income persons in the area, including actions being taken or projected to be taken to address such needs and the impact of such actions on the project;

(7) An assessment of the number of occupants who might be displaced as a result of the manner of disposition;

(8) The eligibility of the occupants of the property for rental assistance under any program administered by HUD and the availability of funding for such assistance if necessary in order that the units occupied by such occupants will remain available to and affordable by such persons, or if necessary in order to assure the financial feasibility of the project after foreclosure and sale subject to the terms to be required by the Secretary; and

(9) Such other factors relating to the project as the Secretary shall consider appropriate.

(c) Terms which the Secretary may require to be agreed to by the purchaser pursuant to the Act shall generally not be more restrictive, or binding for a longer duration, than the terms by which the mortgagor was bound prior to the foreclosure. For example:

(1) If the mortgage being foreclosed was previously insured by the Secretary under section 608, or 801, or title II or X of the National Housing Act; or assisted under section 202 of the Housing Act of 1959, as it existed before its amendment by section 801 of the Cranston-Gonzalez National Affordable Housing Act, any terms required by the Secretary pursuant to the Act shall be in effect no longer than the earliest date on which the mortgagor could have prepaid the mortgage debt without the Secretary's consent, or the maturity date of the mortgage, whichever is earlier. No terms shall be required pursuant to the Act if, under the terms of the mortgage, the mortgagor could have prepaid the mortgage debt in full without the Secretary's consent on or before the date of the foreclosure sale.

(2) If the mortgage being foreclosed was taken by the Secretary in conjunction with the previous sale of the project by the Secretary (purchase money mortgage), any terms required by the Secretary pursuant to the Act shall be in effect no longer than the earliest date on which the mortgagor under the Purchase Money Mortgage could have prepaid the mortgage debt in full without the Secretary's consent, or the maturity date of the mortgage, whichever is earlier. No terms shall be required pursuant to the Act if the mortgagor could have prepaid the mortgage debt in full without the Secretary's consent on or before the date of the foreclosure sale.

(3) If the mortgage being foreclosed covers a project which is governed by a use agreement executed under section 1(d)(1) of the Housing and Community Development Amendments of 1978, as amended (12 U.S.C. 1715z–1a); section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q); section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or section 225(b) of the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 17151), any terms required by the Secretary under the Act shall be in effect no longer than the maturity date of the mortgage.

(4) If the mortgage being foreclosed was held by the Secretary under section 312 of the Housing Act of 1964, any terms required by the Secretary pursuant to the Act shall be in effect no longer than five years after the completion of the rehabilitation work funded by the section 312 loan. No terms shall be required pursuant to the Act if the foreclosure sale occurs more than five years after the completion of such rehabilitation work.

(5) If the mortgage being foreclosed covers a project which is governed by a use agreement executed under section 222(b) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4112), any terms required by the Secretary under the Act shall be in effect for the remaining useful life of the project. Remaining useful life has the same meaning given the term in § 24 CFR 248.101.

(d) The limitations contained in paragraph (c) of this section apply only to such terms as the Secretary may require the purchaser to agree to, as a condition and term of the sale, under paragraph (a) of this section. Nothing contained in paragraph (c) of this section shall prevent the Secretary and the purchaser from entering into a subsidy agreement under any program administered by the Secretary containing terms binding upon either party which are longer in duration than would be permitted to be required by paragraph (c) of this section.

(e) Any terms required by the Secretary to be agreed to by the purchaser as a condition and term of sale under the Act shall be embodied in a use agreement to be executed by the Secretary and the purchaser. Such terms also may be included, or referred to, in appropriate covenants contained in the deed to be delivered by the foreclosure commissioner as described in section 12 of this Guide. Terms required by the Secretary shall be stated or described in the Notice of Default and Foreclosure Sale served, published and posted in accordance with section 6 of this Guide.

8. Termination or Adjournment of Foreclosure Sale

(a) Except as provided in paragraphs (d), (e), and (f) of this section, the commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if:

(1) The Secretary so directs the commissioner; or

(2) The commissioner finds, upon application of the mortgagor at least three

business days prior to the scheduled sale, that the default or defaults upon which the foreclosure is based did not exist when the Notice of Default and Foreclosure Sale was served; or

(3) (i) In the case of a monetary default, the entire amount of principal and interest which would be due if payments under the mortgage had not been accelerated is tendered to the commissioner before the public auction is completed, and the commissioner finds that there are no nonmonetary defaults;

(ii) In the case of a nonmonetary default, the commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that all nonmonetary defaults have been cured and that there are no monetary defaults; and

(iii) There is tendered to the commissioner before public auction is completed, all amounts due under the mortgage agreement excluding additional amounts which would have been due if mortgage payments had been accelerated, all expenditures secured by the mortgage, and all foreclosure costs incurred for which payment from foreclosure proceeds is authorized, as described in section 10 of this Guide.

(b) Before withdrawing the security property from foreclosure as described in paragraph (a) (2) or (3) of this section, the commissioner shall notify the Secretary of the proposed withdrawal by telephone or telegram and shall provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have 10 days within which to demonstrate orally or in writing why the security property should not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the commissioner. If the Secretary receives the commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale shall be served as described in paragraph (d) of this section.

(c) The commissioner may not withdraw the security property from foreclosure as described in paragraph (a)(3) of this section more than once unless the Secretary consents in writing to such withdrawal.

(d) Before or at the time of sale, the foreclosure commissioner may, in his or her discretion, determine that circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary, or that additional time is necessary to determine if the sale should be terminated as described in paragraph (a) (2) or (3) of this section. If the commissioner makes such a determination, he or she may adjourn the foreclosure to a later time on the scheduled sale date or to a date not less than nine nor more than 24 days later than the scheduled sale date. If the sale is adjourned to a later hour on the scheduled sale date, no additional notice of the sale is required. If the sale is adjourned to a later date, a revised Notice of Default and Foreclosure Sale reciting that the sale has been adjourned to a specific new date and containing any other corrections the commissioner deems appropriate shall be served in accordance with the provisions of section 6.(c) of this Guide, except that publication under section 6(c)(4) may be made on any of three separate days prior to the revised date of foreclosure sale so long as the first publication is made at least seven days before the revised sale date, and mailing under section 6(c) (1) through (3) may be made at any time at least seven days before the date to which the foreclosure sale has been adjourned. The commissioner shall also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(e) If the General Counsel designates a substitute commissioner less than 48 hours before the foreclosure sale, the sale shall be terminated and a new foreclosure commenced by serving a new Notice of Default and Foreclosure Sale, in accordance with section 6.(c) of this Guide.

(f) If the General Counsel designates a substitute commissioner 48 hours or more before the foreclosure sale, the foreclosure will continue without prejudice unless the substitute commissioner in his or her sole discretion finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel the sale or adjourn it according to the provisions of paragraph (d) of this section.

(g) If the commissioner cancels the foreclosure, the mortgage will continue in effect as if the mortgage debt had not been accelerated.

(h) If the commissioner cancels the foreclosure sale, a new foreclosure may be subsequently commenced as provided under the Act.

(i) If upon application by the mortgagor, the commissioner refuses to withdraw the property from foreclosure as described in paragraphs (a)(2) and (a)(3)(ii) of this section, the commissioner shall provide the mortgagor and the Secretary with a written statement of the reasons for the refusal.

9. Conduct of the Sale

(a) The foreclosure commissioner shall conduct the foreclosure sale at public auction in a manner fair to both the mortgagor and the Secretary and consistent with the provisions of the Act. The commissioner shall attend the foreclosure sale in person or, if the Commissioner is not a natural person, through a duly authorized employee. If more than one commissioner has been designated, at least one shall attend the sale. The commissioner shall accept written one-price sealed bids from any party including the Secretary so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale which are contained in section 6.(b)(12) of this Guide. The commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements described in the Notice of Default and Foreclosure Sale which are contained in section 6.(b)(12) of this Guide. The commissioner will announce the amount of the high bid and the name of the successful bidder before the close of the sale.

(b) Notwithstanding the provisions of paragraph (a) of this section, neither the commissioner nor any relative, related business entity or employee shall be permitted to bid at the foreclosure sale. Relatives of the commissioner who may not bid include parents, siblings, spouses and children. Related business entities which may not bid include entities or concerns whose relationship with the commissioner at the time the commissioner is designated is such that, directly or indirectly, one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct, the offensive conduct of the other concern. Business concerns are also affiliates of each other when a third party is similarly situated with respect to both concerns.

(c) If a natural person, the commissioner may serve as auctioneer or, in the commissioner's discretion, may employ an auctioneer to conduct the sale. If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located. The commissioner will compensate any such auctioneer from the proceeds of the fee he or she collects as described in section 10(e) of this Guide.

10. Foreclosure Costs

Before any claim may be satisfied from the sale proceeds, those proceeds shall be used to pay the following costs:

(a) Advertising and postage expenses incurred in serving the Notice of Default and Foreclosure Sale under section 6.(c) (1) through (4) of this Guide;

(b) Mileage by the most reasonable road distance for posting the Notice of Default and Foreclosure Sale under section 6.(c)(5) of this Guide and for the foreclosure commissioner's attendance at the sale. The mileage shall be paid at a rate provided in 28 U.S.C. 1921;

(c) Reasonable and necessary costs incurred for title and lien record searches;

(d) The necessary out-of-pocket costs incurred by the commissioner for recording documents; and

(e) A commission to the foreclosure commissioner for the conduct of the foreclosure in an amount to be determined by the General Counsel. A commission may be allowed to the commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

11. Disposition of Sale Proceeds

(a) The proceeds of the foreclosure sale shall be used in the following order:

(1) To pay the costs listed in section 10 of this Guide;

(2) To pay valid tax liens or assessments on the security property which have priority over the foreclosed mortgage;

(3) To pay liens recorded prior to the recording of the foreclosed mortgage which are required to be paid in conformity with the Notice of Default and Foreclosure Sale;

(4) To pay service charges and advancements for taxes, assessments and property insurance premiums which were made under the terms of the foreclosed mortgage;

(5) To pay the interest due under the mortgage debt;

(6) To pay the unpaid principal balance secured by the mortgage (including expenditures for the necessary protection, preservation and repair of the security property as authorized under the mortgage agreement and interest thereon if provided in the mortgage agreement);

(7) To pay any late charges;

(8) To pay any liens recorded after the foreclosed mortgage; and

(9) To pay the surplus to the mortgagor.

(b) The priority of the Secretary's lien shall be determined by the Federal first-in-time first-in-right rule. State laws affording priority to liens recorded after the mortgage are preempted.

(c) If the mortgagor entitled to the surplus cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants to the surplus cannot agree on its disposition, or if a claimant to the proceeds of the sale disagrees with the commissioner's proposed disposition of the proceeds, the commissioner may deposit the disputed funds with a legally authorized official or court. If such a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs in taking or defending such action shall be deductible from the disputed funds.

(d) If there is more than one party holding a lien or assessment described in paragraph (a) (2), (3) or (8) of this section, the claim of each party holding the same kind of lien or assessment will be given the relative priority to which it would be entitled under the law of the State in which the security property is located.

(e) The commissioner will keep such records as will permit the Secretary to verify the costs claimed under section 10 of this Guide, and otherwise to audit the commissioner's disposition of the sale proceeds.

12. Transfer of Title and Possession

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs listed in section 11.(a) (1) through (3) of this Guide. If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser upon receipt of the entire purchase price and execution by the Secretary and the purchaser of any use agreement referred to in section 7(e) of this Guide. The deed shall convey all of the Secretary's rights, title and interest in the security property as well as the rights of the commissioner, the mortgagor, and any other person claiming by, through, or under them. Any required covenants reflecting terms described in section 7 of this Guide shall be contained in the commissioner's deed. No judicial proceeding shall be required ancillary or supplementary to the procedures provided in this part to assure the validity of the conveyance or confirmation of such conveyance.

(b) The commissioner shall deliver possession of the security property to the purchaser at the same time he or she delivers the deed. The purchaser's possession of the security property shall be subject to any interests senior to that of the mortgage and to the terms of any existing residential lease for the remaining term of the lease or for one year, whichever is shorter. Subject to any required terms described in section 7 of this Guide, any commercial tenant and any residential tenant remaining in possession after the expiration of his or her lease or after the passage of one year, whichever event occurs first, shall be deemed a tenant at sufferance and may be evicted in accordance with applicable State or local law.

(c) When the commissioner conveys the property to the Secretary, no tax shall be imposed or collected with respect to the commissioner's deed, whether as a tax upon the instrument itself or upon the privilege of conveying or transferring title to the property.

(d) The registrar of deeds or other appropriate official in the county where the property is located shall, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the commissioner for recordation. The instruments to be accepted shall include, but not be limited to, the commissioner's deed and the commissioner's affidavit, both of which are described in section 14 of this Guide.

(e) Failure to collect or pay a tax described in paragraph (c) of this section shall not be grounds for refusing to record the commissioner's deed, for failing to recognize such recordation or for denying enforcement of the deed in any State or Federal court.

13. Redemption Rights

The mortgagor or others will have no right to redeem the mortgage after the foreclosure sale. The mortgagor or others will have no right to possession of the security property after the foreclosure sale based on a right of redemption.

14. Record of Foreclosure and Sale

(a) The deed to the purchaser shall contain the following recitals:

(1) A statement that the foreclosed mortgage was held by the Secretary;

(2) The details of the service of the Notice of Default and Foreclosure Sale described in section 6(c) of this Guide, including the names and addresses of persons to whom the Notice was mailed and the dates on which the Notice was mailed, names of newspapers in which and dates on which the Notice was published, and the date on which service by posting was accomplished;

(3) A statement that the foreclosure was conducted in accordance with the Act and with the terms of the Notice of Default and Foreclosure Sale;

(4) The costs of the foreclosure as described in section 10 of this Guide; and

(5) The name of the successful bidder and the amount of the successful bid.

(b) The commissioner may, in his or her discretion, make these recitations in an affidavit or addendum to the deed rather than in the body of the deed.

15. Management and Disposition by the Secretary

When the Secretary is the purchaser of the security property, the Secretary shall manage and dispose of it in accordance with section § 203 of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1701z–11, and in accordance with 24 CFR part 290.

16. Computation of Time

Periods of time provided for in this Guide shall be calculated in consecutive calendar days including the day or days on which the actions or events occur or are to occur. Any such period of time includes the day on which an event occurs or is to occur.

Appendix B: Nonjudicial Foreclosure of Single Family Mortgages—Guide

Sec.

1. Purpose

The purpose of this guide is to present, in a single document, the statutory and regulatory requirements of the Single Family Mortgage Foreclosure Act of 1994 (the Statute), 12 U.S.C. §§ 3751–3768. Although it presents the regulatory and statutory requirements in a combined format, this guide is a secondary source for these requirements. The Code of Federal Regulations (CFR), at 24 CFR part 27, subpart B, is the primary, governing source for regulatory requirements, and the Statute is the primary, governing source for statutory requirements. Any reference in this Guide to the provisions of the Statute includes the requirements of 24 CFR part 27, subpart B.

The Statute creates a uniform Federal remedy for foreclosure of certain single family mortgages which are held by the

Secretary of Housing and Urban Development pursuant to Title I of the National Housing Act, 12 U.S.C. 1702 *et seq.*, Title II of the National Housing Act, 12 U.S.C. 1707 *et seq.*, or Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b (as it existed before repeal). The Secretary's powers under the Statute to appoint a foreclosure commissioner or commissioners and substitute commissioners, and to fix the compensation of commissioners have been delegated to the HUD General Counsel.

The availability of uniform and more expeditious procedures, with no right of redemption in the mortgagor or others, for the foreclosure of these mortgages by the Department, will ameliorate the negative consequences of the disparate State laws under which mortgages covering one- to four-family residential properties are foreclosed on behalf of HUD. The long periods of time that are required under State law to complete foreclosure of such mortgages lead to deterioration in the condition of the properties involved, necessitate substantial Federal holding expenditures, increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties, and adversely affect the neighborhoods in which the properties are located. These consequences seriously impair the ability of HUD to protect Federal financial interests in the properties and frustrate attaining the objectives of the underlying Federal program authority. Use of this nonjudicial foreclosure procedure will also reduce unnecessary litigation, which contributes to already overcrowded court calendars, by removing many foreclosures from the courts.

2. Scope and Applicability

(a) Scope. Under the Statute, HUD may foreclose on any defaulted single family mortgage (as defined in section 3, below) encumbering real estate in any State regardless of when the mortgage was executed.

(b) Applicability. HUD, at its discretion, may use other procedures to foreclose defaulted single family mortgages, including judicial foreclosure in State or Federal Court, and nonjudicial foreclosures under State law or any other Federal law.

3. Definitions

As used in this guide—

Statute means the Single Family Mortgage Foreclosure Act of 1994.

Bona fide purchaser means a purchaser for value in good faith and without notice of any adverse claim, and who acquires the security property free of any adverse claim.

County means a political subdivision of a State or Territory of the United States, created to aid in the administration of state law for the purpose of local self-government, and includes a parish or any other equivalent subdivision.

Mortgage means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real or mixed real and personal), or any interest in property (including leaseholds, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

Mortgage agreement means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or any other similar instrument or instruments creating the security interest in the real estate for the repayment of the note or debt instrument, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

Mortgagor means the debtor, obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not such owner is personally liable on the mortgage debt.

Owner means any person who has an ownership interest in the property and includes heirs, devisees, executors, administrators, and other personal representatives, and trustees of testamentary trusts if the owner of record is deceased.

Person includes any individual, group of individuals, association, partnership, corporation, or organization.

Record; Recorded means to enter or entered in public land record systems established under State statutes for the purpose of imparting constructive notice to purchasers of real property for value and without actual knowledge, and includes ''register'' and ''registered'' in the instance of registered land, and ''file'' and its variants in the context of entering documents in public land records.

Secretary means the Secretary of Housing and Urban Development, acting by and through any authorized designee exclusive of the foreclosure commissioner.

Security property means the property (real or mixed real and personal) or an interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable law), together with fixtures and other interests subject to the lien of the mortgage under applicable law.

Single family mortgage means a mortgage that covers property on which there is located a 1- to 4- family residence, and that:

(1) Is held by the Secretary pursuant to title I or title II of the National Housing Act (12 U.S.C. 1701 et seq.); or

(2) Secures a loan obligated by the Secretary under section 312 of the Housing Act of 1964 as it existed before the repeal of that section by section 289 of the Cranston-Gonzalez National Affordable Housing Act. A mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling is not subject to foreclosure under the Statute.

State means:

(1) The several States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) The United States Virgin Islands;

(5) Guam;

(6) American Samoa;

(7) The Northern Mariana Islands; and

(8) Indian tribes, meaning any Tribe, band, group or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

4. Designation of Foreclosure Commissioner

(a) The Secretary may designate a person or persons to serve as a foreclosure commissioner for the purpose of foreclosing single family mortgages, and such a foreclosure commissioner has a nonjudicial power of sale as provided under the Statute.

(b) The foreclosure commissioner, if a natural person, must be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under laws of the State in which the security property is located. No person shall be designated as a foreclosure commissioner unless that person is determined by the Secretary to be responsible, financially sound, and competent to conduct a foreclosure. The method of selection and determination of the qualifications of the foreclosure commissioner are at the discretion of the Secretary, and the execution of a designation pursuant to the Statute is conclusive evidence that the commissioner selected has been determined to be qualified by the Secretary.

(c) The Secretary designates a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such a person may be designated by his or her unique title or position instead of by name. The designation is effective upon execution.

(d) The Secretary may designate, with or without cause, a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by the procedure contained in paragraph (c) of this section, above.

(1) A substitution of the foreclosure commissioner may be made at any time prior to the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding must be in writing. If the substitute commissioner makes such a finding, the substitute commissioner will cancel the foreclosure sale, or adjourn the sale as explained in section 11, below.

(2) If a substitute commissioner is designated, a copy of the written notice of the designation referred to in paragraph (c) of this section must be served:

(i) By mail, as described in section 8, below (except that the minimum time periods between mailing and the date of the foreclosure sale do not apply); or

(ii) In any other manner which, in the substitute foreclosure commissioner's sole discretion, is conducive to achieving timely notice of such substitution.

5. Prerequisites to Foreclosure

(a) The Secretary may commence foreclosure of a single family mortgage under the Statute upon the breach of a covenant or condition in the mortgage agreement.

(b) No foreclosure under the Statute may be commenced unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage in a manner other than under the Statute has been withdrawn, dismissed, or otherwise terminated.

(c) The Secretary will not institute any separate foreclosure proceeding concerning a property while it is the subject of a foreclosure pursuant to the Statute.

(d) The Statute does not preclude the Secretary from enforcing any right, other than foreclosure, under applicable Federal or State law, including any right to obtain a monetary judgment, or foreclosing under the Statute if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement.

6. Commencement of Foreclosure

If the Secretary determines that the prerequisites to foreclosure set forth in section 5 are satisfied, the Secretary may direct the foreclosure commissioner to commence foreclosure of the mortgage. Upon such request, the foreclosure commissioner will commence foreclosure of the mortgage in accordance with section 7, below.

7. Notice of Default and Foreclosure Sale

The commissioner commences the foreclosure by serving a Notice of Default and Foreclosure Sale. The Notice sets forth the name, address and telephone number of the foreclosure commissioner and the date on which the Notice was issued, along with the following information:

(a) The current mortgagee (that is, the Secretary), the original mortgagee (if other than the Secretary), and the original mortgagor.

(b) A description of the security property sufficient to identify the property to be sold.

(c) The date of the mortgage, the date the mortgage was recorded, the office in which the mortgage is recorded, and the liber and folio numbers or other appropriate description of the location of recordation of the mortgage.

(d) Identification of the failure to make payment, including the entire amount delinquent as of a date specified, a statement generally describing the other costs that must be paid if the mortgage is to be reinstated, the due date of the earliest principal installment payment remaining wholly unpaid as of the date on which the Notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness.

(e) The date, time, and location of the foreclosure sale.

(f) A statement that the foreclosure is being conducted in accordance with the Statute.

(g) A description of the types of costs, if any, to be paid by the purchaser upon transfer of title.

(h) The bidding and payment requirements for the foreclosure sale, including the amount and method of deposit to be required at the foreclosure sale, and the time and method of payment of the balance of the foreclosure purchase price. The Notice must state that all deposits and the balance of the purchase price must be paid by certified or cashier's check. The Notice must also state that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

(i) Any other appropriate terms of sale or information as the Secretary may determine.

8. Service of Notice of Default and Foreclosure Sale

The foreclosure commissioner will serve the Notice of Default and Foreclosure Sale upon the following persons and in the following manner, and no additional notice will be required to be served, notwithstanding any notice requirements of any State or local law:

(a) Filing the notice. The Notice of Default and Foreclosure Sale must be filed not less than 21 days before the date of the foreclosure sale in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located, or if none, in the manner authorized by Section 3201 of title 28, United States Code.

(b) Notice by mail.

(1) The Notice must be sent by certified or registered mail, postage prepaid, return receipt requested, to the following (except that multiple mailings are not required to be sent to any party with multiple capacities, e.g., an original mortgagor who is the security property owner and lives in one of the units):

(i) The current security property owner of record, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in the Statute. The Notice must be mailed not less than 21 days before the date of the foreclosure sale to the current owner at the last address known to the Secretary or the foreclosure commissioner or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of the current owner.

(ii) The original mortgagor and all subsequent mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in the Statute, except that the Notice need not be mailed to any mortgagors who have been released from all obligations under the mortgage. Notice under this subsection must be mailed not less than 21 days before the date of the foreclosure sale to the last known address of the mortgagors or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such mortgagors.

(iii) All dwelling units in the security property, whether or not the Notice describes a sale adjourned as provided in this part. Notice under this subsection shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or if the security property has more than one dwelling, the Notice must be posted at the security property not less than 21 days before the foreclosure sale.

(iv) All persons holding liens of record upon the security property, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in the Statute. Notice under this subsection must be mailed not less than 21 days before the date of the foreclosure sale to each such lienholder's address of record, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder.

(2) Notice by mail is deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the notice is returned. The date of the receipt for the postage paid for the mailing may serve as proof of the date of mailing of the notice.

(c) Publication.

(1) A copy of the Notice of Default and Foreclosure Sale must be published once a week during three successive calendar weeks before the date of the foreclosure sale. Such publication must be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. A legal newspaper that is accepted as a newspaper of legal record in the county or counties in which the security property being sold is located is a newspaper having general circulation for the purposes of this paragraph.

(2) If there is no newspaper of general circulation published at least weekly in the county or counties in which the security property being sold is located, copies of the Notice of Default and Foreclosure Sale must be posted, not less than 21 days before the date of the foreclosure sale, at the courthouse of any county or counties in which the security property is located and at the place where the sale is to be held.

9. Presale Reinstatement

(a) Except as provided in paragraph (d) of section 4 (above), paragraph (b) of this section, and section 11 (below), the foreclosure commissioner will withdraw the security property from foreclosure and cancel the foreclosure sale only if:

(1) The Secretary directs the foreclosure commissioner to do so before or at the time of the sale; or

(2) The foreclosure commissioner finds, upon application of the mortgagor not less than three business days before the date of the sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the Notice of Default and Foreclosure Sale; or

(3) In the case of a foreclosure involving a monetary default, there is tendered to the

foreclosure commissioner before public auction is completed all amounts that would be due under the mortgage agreement if payments under the mortgage had not been accelerated, all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 13 (below), and the foreclosure commissioner finds that there are no nonmonetary defaults; provided, however, that the Secretary may refuse to cancel a foreclosure sale pursuant to this subparagraph if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to the Statute or otherwise, to be canceled by curing a default; or

(4) In the case of a foreclosure involving a nonmonetary default:

(i) The foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that all nonmonetary defaults are cured and that there are no monetary defaults; and

(ii) There is tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding all amounts which would be due under the mortgage agreement if the mortgage payments had been accelerated), including all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment would be made from the proceeds of foreclosure.

(b) Before withdrawing the security property from foreclosure under subparagraphs (a)(2), (a)(3), or (a)(4) of this section, the foreclosure commissioner must notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and must also provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary has ten (10) days in which to demonstrate why the security property should not be withdrawn from foreclosure, and if the Secretary makes this demonstration, the property will not be withdrawn from foreclosure. The Secretary will provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale will automatically be adjourned for 14 days, during which time it may also be cancelled. Under these circumstances, notice of the rescheduled sale, if any, will be served as described in section 11(c), below.

(c) If the foreclosure commissioner cancels the foreclosure, the mortgage will continue in effect as though acceleration had not occurred.

(d) Cancellation of a foreclosure sale will have no effect on the commencement of a subsequent foreclosure proceeding.

(e) The foreclosure commissioner must file a notice of cancellation in the same place and manner provided for filing the Notice of Default and Foreclosure Sale as provided in section 8.

10. Conduct of Sale

(a) The foreclosure sale will be conducted in a manner and at a time and place as identified in the Notice of Foreclosure and Sale and more fully described in this section. The sale will be scheduled for a date 30 or more days after the due date of the earliest unpaid installment as described in section 7(d), above, or the earliest occurrence of a nonmonetary default. The sale will be held at public auction and must be scheduled to begin at a time between the hours of 9:00 a.m. and 4:00 p.m. local time. The sale will be scheduled for a place where foreclosure real estate auctions are customarily held in the county or counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. If the security property is situated in two counties, the sale may be held in any one of the counties in which any part of the security property is situated.

(b) The foreclosure commissioner will conduct the foreclosure sale in a manner that is fair to both the mortgagor and the Secretary (see section 12, below) and consistent with the provisions of the Statute.

(c) In addition to bids made in person at the sale, the foreclosure commissioner will accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The foreclosure commissioner will announce the name of each bidder and the amount of the bid. The commissioner will accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements in the Notice of Default and Foreclosure Sale. Before the close of the sale, the commissioner will announce the amount of the high bid and the name of the successful bidder.

(d) Notwithstanding the provisions of paragraph (d) of this section, neither the foreclosure commissioner nor any relative, related business entity, or employee is permitted to bid in any manner on the security property subject to the foreclosure sale, except that the foreclosure commissioner or an auctioneer may be directed by the Secretary to enter a bid on the Secretary's behalf. Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, the offensive conduct of the other entity.

(e) The commissioner may serve as an auctioneer, or the commissioner may employ an auctioneer to conduct the sale. If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located. The commissioner will compensate an auctioneer from the proceeds of the commission described in section 13(e), below.

(f) The foreclosure commissioner may require a bidder to make a deposit in an amount or percentage set by the foreclosure commissioner and stated in the Notice of Default and Foreclosure Sale before the bid is accepted.

(g) A successful bidder at the foreclosure sale who fails to comply with the terms of the sale may be required to forfeit the cash deposit or, at the election of the foreclosure commissioner after consultation with the Secretary, will be liable to the Secretary for any costs incurred as a result of such failure. If the successful bidder fails to comply with the terms of the sale, the HUD Field Office representative will provide instructions to the commissioner about offering the property to the second highest bidder, or having a new sale, or other instruction at the discretion of the HUD representative.

11. Adjournment or Cancellation of Sale

(a) The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if the foreclosure commissioner determines, in the foreclosure commissioner's discretion, that:

(1) Circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary, or

(2) Additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in section 9, above.

(b) The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting, at the original place of sale, the new time and place of the foreclosure sale, which must be held between 9:00 a.m. and 4:00 p.m. at the original place of sale.

(c) Except as provided in paragraph (b) of this section, the foreclosure commissioner may adjourn a foreclosure sale for not less than 9 and not more than 31 days, in which case the foreclosure commissioner must serve a Notice of Default and Foreclosure Sale that is revised to state that the foreclosure sale has been adjourned to a specified date between the hours of 9:00 a.m. and 4:00 p.m. The revised Notice may include any other information the foreclosure commissioner deems appropriate. Such Notice must be served by publication and mailing as provided in section 8, above, except that publication may be made on any of three separate days before the revised date of foreclosure sale. If there is no newspaper of general circulation that would permit publication on any of three separate days before the revised date of foreclosure sale, the Notice of Default and Foreclosure Sale must be posted, not less than nine days before the date to which the sale has been adjourned, at the courthouse of any county or counties in which the property is located, and at the place where the sale is to be held. The

commissioner must also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(d) When a substitute commissioner is designated by the Secretary to replace a previously designated foreclosure commissioner, the sale shall continue without prejudice unless the substitute commissioner finds, in that commissioner's sole discretion, that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding shall be in writing. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel or adjourn the sale.

12. Validity of Sale

Any foreclosure sale held in accordance with the Statute and its regulations is conclusively presumed to have been conducted in a fair, legal, and reasonable manner. The sale price is conclusively presumed to be reasonable and equal to the fair market value of the property.

13. Foreclosure Costs

The following foreclosure costs are paid from the sale proceeds, or from other available sources if sales proceeds are insufficient, before satisfaction of any other claim to the sale proceeds:

(a) Advertising costs and postage expenses incurred in giving notice described in sections 8 and 11, above.

(b) Mileage by the most reasonable road distance for posting notices described in section 8, above, and for the foreclosure commissioner's or auctioneer's attendance at the sale. The mileage is paid at the rate provided in 28 U.S.C. 1821.

(c) Reasonable and customary costs incurred for title and lien record searches.

(d) The necessary out-of-pocket costs incurred by the foreclosure commissioner for recording documents.

(e) A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure in an amount to be determined by the Secretary. A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

14. Disposition of Sale Proceeds

(a) The proceeds of the foreclosure sale are paid out in the following order:

(1) To cover the costs of foreclosure described in section 13, above.

(2) To pay valid tax liens or assessments on the security property as provided in the Notice of Default and Foreclosure Sale.

(3) To pay any liens recorded before the recording of the foreclosed mortgage which are required to be paid in conformity with the Notice of Default and Foreclosure Sale.

(4) To pay service charges and advances for taxes, assessments, and property insurance premiums which were made under the terms of the foreclosed mortgage.

(5) To pay the interest due under the mortgage debt.

(6) To pay the unpaid principal balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided in the mortgage agreement).

(7) To pay any late charges or fees.

(b) Any surplus proceeds from a foreclosure sale will be applied, after payment of the items described in paragraph (a) of this section, in the order as follows:

(1) To pay any liens recorded after the foreclosed mortgage in the order of priority under the law of the State in which the security property is located.

(2) To pay the surplus to the mortgagor.

(c) If the person to whom surplus proceeds are to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds disagrees with the foreclosure commissioner's proposed disposition of the disputed proceeds, the foreclosure commissioner may deposit the disputed funds with a legally authorized official or court. If a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs in taking or defending such action are deductible from the disputed funds.

(d) The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed, and otherwise to enable the Secretary to audit the foreclosure commissioner's disposition of the sale proceeds.

15. Transfer of Title and Possession

(a) If the Secretary is the successful bidder, the foreclosure commissioner will issue a deed to the Secretary upon receipt of the amount needed to pay the costs of tax liens and prior liens. *See* sections 14(a)(2) and (a)(3), above.

(b) If the Secretary is not the successful bidder, the foreclosure commissioner will issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(c) The deed or deeds issued by the foreclosure commissioner shall be without warranty or covenants to the purchaser or purchasers. Notwithstanding any State law to the contrary, delivery of a deed by the foreclosure commissioner is a conveyance of the property and constitutes passage of good and marketable title to the mortgaged property. No judicial proceedings are required ancillary or supplementary to the procedures provided under the Statute and its regulations to assure the validity of the conveyance or confirmation of such conveyance. The purchaser of property under the Statute is presumed to be a bona fide purchaser.

(d) A purchaser at a foreclosure sale held pursuant to the Statute is entitled to possession upon passage of title under paragraph (c) of this section, subject to any interest or interests that are not barred, as described in section 18, below. Any person remaining in possession of the property after the passage of title is deemed a tenant at sufferance subject to eviction under applicable law.

(e) If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, the foreclosure commissioner will execute and deliver the deed to a legal representative of the decedent purchaser's estate upon payment of the purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate will have the same effect as if accomplished during the lifetime of the purchaser.

(f) When the foreclosure commissioner conveys the property to the Secretary, no tax may be imposed or collected with respect to the foreclosure commissioner's deed, including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property.

(g) The register of deeds or other appropriate official in the county where the property is located must, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the foreclosure commissioner for recordation. The instruments to be accepted include, but are not limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations described in section 17(a), below, in an affidavit or an addendum to the deed as described in section 17(b), below, the affidavit or addendum must be accepted for recordation. Failure to collect or pay a tax as described in paragraph (f) of this section are not grounds for refusing to record such instruments, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such instruments and their provisions in any State or Federal Court.

(h) The Clerk of the Court or other appropriate official must cancel all liens as requested by the foreclosure commissioner.

16. Redemption Rights

(a) There is no right of redemption, or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed pursuant to the Statute. In regard to the pre-emption of State laws regarding rights of redemption, a foreclosure is considered completed upon the date and at the time of the foreclosure sale.

(b) Section 204(l) of the National Housing Act, 42 U.S.C. 1710(l), and section 701 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 1452c, do not apply to mortgages foreclosed under the Statute.

17. Record of Foreclosure and Sale

(a) The foreclosure commissioner must include in the recitals of the deed to the purchaser, or in an affidavit or addendum to the deed, the following items:

(1) The date, time, and place of the foreclosure sale.

(2) A statement that the foreclosed mortgage was held by the Secretary.

(3) The date of the foreclosed mortgage, the date of the recording of the mortgage that was foreclosed, the office in which the mortgage was recorded, and the liber and folio numbers or other appropriate description of the recordation of the mortgage.

(4) The details of the service of the Notice of Default and Foreclosure Sale, including the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed, the name of the newspaper in which the Notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.

(5) The date and place of filing the Notice of Default and Foreclosure Sale.

(6) A statement that the foreclosure was conducted in accordance with the provisions of the Statute and with the terms of the Notice of Default and Foreclosure Sale.

(7) The name of the successful bidder and the amount of the successful bid.

(b) The foreclosure commissioner may, in his or her discretion, make the recitations in paragraph (a) of this section in the deed or in an affidavit or addendum to the deed, either of which is to be recorded with the deed as provided in the Statute.

(c) The items set forth in paragraph (a) of this section are prima facie evidence of the truth of such facts in any Federal or State court and evidence a conclusive presumption in favor of bona fide purchasers and encumbrancers for value without notice. Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a security interest in the newly-conveyed property.

18. Effect of Sale

A sale made and conducted as prescribed in the Statute to a bona fide purchaser bars all claims upon, or with respect to, the property sold for the following persons:

(a) Any person to whom the Notice of Default and Foreclosure Sale was mailed as provided under the Statute, and the heir, devisee, executor, administrator, successor or assignee claiming under any such person.

(b) Any person claiming any interest in the property subordinate to that of the mortgage if such person had actual knowledge of the foreclosure sale.

(c) Any person claiming any interest in the property whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as described in section 8(c), above, and the executor, administrator, or assignee of such a person.

(d) Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of the foregoing paragraphs.

19. Computation of Time

Periods of time provided for in the Statute are calculated in consecutive calendar days including the day or days on which the actions or events occur, or are to occur. Any such period of time includes the day on which an event occurs or is to occur.

20. Deficiency Judgment

If the price at which the security property is sold at the foreclosure sale is less than the unpaid balance of the debt secured by such property after deducting payments in the order described in section 14, above, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any and all debtors to recover the deficiency, the only limitation on such action being a prohibition against pursuit of a deficiency that is specifically set forth in the mortgage.

[FR Doc. 96–23258 Filed 9–12–96; 8:45 am]

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Federal Register

Friday
September 13, 1996

Part IV

Department of Education

34 CFR Part 668, et al.

Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

RIN 1840–AC39

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations, 34 CFR Part 668, to implement an amendment made to the General Education Provisions Act (GEPA) by the Improving America's Schools Act of 1994 (IASA). That amendment decreased from five years to three years the length of time that a recipient of Federal funds is required to maintain records. In addition, the Secretary is proposing to consolidate and clarify existing records retention rules, and reduce administrative burden on institutions.

DATES: Comments must be received on or before October 28, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Mr. Kenneth Smith, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272, or to the following internet address (records__retention@ed.gov).

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the above paragraph.

FOR FURTHER INFORMATION CONTACT: Ms. Paula M. Husselmann or Mr. Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5346. The telephone number for Ms. Paula Husselmann is (202) 708–7888. The telephone number for Mr. Kenneth Smith is (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The IASA, Pub.L. 103–382, enacted on October 20, 1994, amended Section 437 of GEPA to reduce from five years to three years the length of time that a recipient of funds under programs administered by the Secretary of Education must maintain records. An institution that participates in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965, (title IV, HEA programs) is covered by this statutory amendment. Therefore, the Secretary is amending applicable regulations to conform those regulations to this statutory change. However, this reduction in record retention time is applicable only to institutions of higher education that participate in the title IV, HEA programs. It does not apply, for example, to lenders or guarantee agencies under the Federal Family Education Loan (FFEL) Programs because these entities are not recipients of program funds.

In the context of examining the regulations governing record keeping, the Secretary noted that the starting point for the record retention period was different under each of the title IV, HEA programs. The Secretary believes that the record keeping period should be the same for all programs, to the extent possible. Therefore, the Secretary is proposing as a general rule that, other than records relating to student loans, an institution must keep records relating to its administration of a title IV, HEA program for an award year for three years after the end of that award year. Thus, an institution would have to keep records relating to its administration of a title IV, HEA program for the 1996–97 award year through June 30, 2000. However, an institution is free to keep these records, as well as the records discussed below, for a longer period of time if it so desires.

The Secretary is proposing the following for certain types of records that do not fit within the general rule. With regard to records relating to student loans under the FFEL and Direct Loan Programs, the Secretary is proposing that an institution keep these records for three years after the end of the award year in which the student borrower last attended the institution. This later starting date for loan records is necessary to provide for the enforceability of the loan, and to ensure the borrower's repayment. The Secretary is also proposing that an institution keep loan records relating to the repayment of loans under the Federal Perkins Loan Program in accordance with the regulations governing that program, 34 CFR 674.19.

A Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study (FWS) Programs (FISAP) involves two award years and is submitted in a third award year. Thus, when an institution submits a FISAP in October 1996 (in the 1996–97 award year) it reports data for the just completed award year (1995–96), and requests funds for the immediate future award year (1997–98). In addition, an institution must be able to document the income grid information that it provides on the FISAP. Accordingly, the Secretary is proposing that an institution keep the FISAP and the records supporting information contained in a FISAP, including income grid information, for three years after the end of the award year in which the FISAP was submitted. Thus, it must keep the FISAP it submits in October 1996 and records supporting the data included in that FISAP until June 30, 2000.

The Secretary has included a non-exhaustive list of the more prominent required records in § 668.24 of these proposed regulations. However, this list does not include every specific record that must be maintained by institutions.

The Secretary will include a more comprehensive listing of records required to be kept in the next publication of the Student Financial Aid Handbook.

The Secretary is, to the extent possible, also consolidating in § 668.24, record keeping requirements applicable to institutions, and eliminating those requirements in the individual program regulations.

Finally, the Secretary is proposing regulations to accommodate new technology by allowing institutions to satisfy its record keeping requirements under various electronic formats. The Secretary proposes that all record information, except those records required to be retained in electronic format, must be retrievable in a coherent hard copy or in other media format acceptable to the Secretary. The provision ''acceptable to the Secretary'' means any media format that the Secretary indicates in various communications with institutions is acceptable; this provision does not mean that institutions must apply for approval of any media format. With respect to retaining electronic records the institution receives or transmits in electronic format, the Secretary proposes that institutions maintain any required record that it transmits or receives electronically in the same electronic format in which the record

was sent or received. The Secretary proposes rules to govern the location of records for review by the Secretary or his representative. Specifically, the regulations propose that an institution make its records readily available for review at an institutional location designated by the Secretary.

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 668.24 Records retention and examinations. (4) Is the description of the proposed regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Mr. Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW, Room 5121, FOB–10, Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these regulations are institutions of higher education that participate in title IV, HEA Programs. These institutions are defined as small entities, according to the U.S. Small Business Administration Size Standards, if they are for-profit or non-profit institutions with total annual revenue below $5,000,000, or if they are institutions controlled by governmental entities with populations below 50,000. These proposed regulations would not have a significant economic impact on small entities. The regulations would benefit both small and large institutions by reducing from five to three years the length of time that institutions must keep records relating to their administration of title IV, HEA Programs. The regulations also would reduce burden on all institutions by providing a common record keeping period for all programs, to the extent possible. Finally, the proposed regulations would allow institutions to satisfy record keeping requirements under various electronic formats. Thus, institutions, both small and large, would experience regulatory relief and a positive economic impact as a result of these proposed regulations.

The Secretary requests comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Section 668.24 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Recordkeeping Requirements

An institution must maintain records documenting its application for and participation in the title IV, HEA programs. The information to be collected includes any application for title IV, HEA program funds and program records that document an institution's eligibility to participate in the title IV, HEA programs; the eligibility of its educational programs for title IV, HEA program funds; its administration of the title IV, HEA programs in accordance with all applicable requirements; its financial responsibility; information included in any application for title IV, HEA program funds; and its disbursement and delivery of title IV, HEA program funds. The Department needs and uses these records to verify an institution's compliance with statute and regulations.

Information is to be collected by institutions on an ongoing basis, as it is created or becomes available. Annual reporting and recordkeeping burden for this collection of information is estimated to average 79.8 hours for each response for 10,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. The total annual reporting and recordkeeping burden for this collection is estimated to be 798,164 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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 of other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection 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.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3045, Regional Office Building 3, 7th and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that

is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 675

Colleges and universities, Employment, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 676

Grants programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: September 9, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007: Federal Supplemental Educational Opportunity Grant Program; 84.032: Federal Stafford Loan Program; 84.032: Federal PLUS Program; 84.032: Federal Supplemental Loans for Students Programs; 84.033: Federal Work-Study Program; 84.038: Federal Perkins Loan Program; 84.063: Federal Pell Grant Program; 84.069: State Student Incentive Grant Program; 84.268: Federal Direct Student Loan Program; and 84.272: National Early Intervention and Scholarship and Partnership Program. A Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned)

The Secretary proposes to amend Parts 668, 674, 675, 676, 682, 685, and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.24 is revised to read as follows:

§ 668.24 Records retention and examinations.

(a) *Program records.* An institution shall establish and maintain, on a current basis, any application for title IV, HEA program funds and program records that document—

(1) Its eligibility to participate in the title IV, HEA programs;

(2) The eligibility of its educational programs for title IV, HEA program funds;

(3) Its administration of the title IV, HEA programs in accordance with all applicable requirements;

(4) Its financial responsibility, as specified in this part;

(5) Information included in any application for title IV, HEA program funds; and

(6) Its disbursement and delivery of title IV, HEA program funds.

(b) *Fiscal records.* (1) An institution shall account for the receipt and expenditure of title IV, HEA program funds in accordance with generally accepted accounting principles.

(2) An institution shall establish and maintain on a current basis—

(i) Financial records that reflect each HEA, title IV program transaction; and

(ii) General ledger control accounts and related subsidiary accounts that identify each title IV, HEA program transaction and separate those transactions from all other institutional financial activity.

(c) *Required records.* (1) The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to—

(i) The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds;

(ii) Application data submitted to the Secretary, lender, or guaranty agency by the institution on behalf of the student or parent;

(iii) Documentation of each student's or parent borrower's eligibility for title IV, HEA program funds;

(iv) Documentation relating to each student's or parent borrower's receipt of title IV, HEA program funds, including but not limited to documentation of—

(A) The amount of the grant or loan, its payment period or loan period, and the calculations used to determine the amount of the grant or loan;

(B) The date and amount of each disbursement of grant or loan funds, and the date and amount of each payment of FWS wages;

(C) The amount, date, and basis of the institution's calculation of any refunds or overpayments due to or on behalf of the student; and

(D) The payment of any refund or overpayment to the title IV, HEA program fund, a lender, or the Secretary, as appropriate;

(v) Documentation of and information collected at any initial or exit counseling required by applicable program regulations;

(vi) Reports and forms used by the institution in its participation in a title IV, HEA program, and any records needed to verify data that appear in those reports and forms; and

(vii) Documentation supporting the institution's calculations of its completion or graduation rates under §§ 668.46 and 668.49.

(2) In addition to the records required under this part—

(i) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for documentation of repayment history for that program;

(ii) Participants in the FWS Program shall follow procedures established in 34 CFR 675.19 for documentation of work, earnings, and payroll transactions for that program; and

(iii) Participants in the FFEL Program shall follow procedures established in 34 CFR 682.610 for documentation of additional loan record requirements for that program.

(d) *General.* (1) An institution shall maintain required records in a systematically organized manner.

(2) An institution shall make its records readily available for review by the Secretary or the Secretary's authorized representative at an institutional location designated by the Secretary or the Secretary's authorized representative.

(3) An institution may keep required records in hard copy or in microform, computer file, optical disk, CD–ROM, or other media formats, provided that—

(i) Except for the records described in paragraph (d)(3)(ii) of this section, all record information must be retrievable in a coherent hard copy format or in other media formats acceptable to the Secretary;

(ii) An institution shall maintain any record that it transmits or receives electronically with regard to a title IV,

HEA program in the electronic format in which it was sent or received;

(iii) Any imaged media format used to maintain required records must be capable of reproducing an accurate, legible, and complete copy of the original document, and when printed, this copy must be the same approximate size as the original document;

(iv) Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format; and

(v) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for maintaining the original promissory notes and repayment schedules for that program.

(4) If an institution closes, stops providing educational programs, is terminated or suspended from the Title IV, HEA programs, or undergoes a change of ownership that results in a change of control as described in 34 CFR 600.31, it shall provide for—

(i) The retention of required records; and

(ii) Access to those records, for inspection and copying, by the Secretary or the Secretary's authorized representative.

(e) *Record retention.* Unless otherwise directed by the Secretary—

(1) An institution shall keep records relating to its administration of the Federal Perkins Loan, FWS, FSEOG, or Federal Pell Grant Program for three years after the end of the award year for which the aid was awarded and disbursed under those programs, provided that an institution shall keep—

(i) The Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, FSEOG, and FWS Programs (FISAP), and any records necessary to support the data contained in the FISAP, including ''income grid information,'' for three years after the end of the award year in which the FISAP is submitted; and

(ii) Repayment records for a Federal Perkins loan, including records relating to cancellation and deferment requests, in accordance with the provisions of 34 CFR 674.19;

(2)(i) An institution shall keep records relating to a student or parent borrower's eligibility and participation in the FFEL or Direct Loan Program for three years after the end of the award year in which the student last attended the institution; and

(ii) An institution shall keep all other records relating to its participation in the FFEL or Direct Loan Program, including records of any other reports or forms, for three years after the end of the award year in which the records are submitted; and

(3) An institution shall keep all records involved in any loan, claim, or expenditure questioned by a title IV, HEA program audit, program review, investigation, or other review until the later of—

(i) The resolution of that questioned loan, claim, or expenditure; or

(ii) The end of the retention period applicable to the record.

(f) *Examination of records.* (1) An institution that participates in any title IV, HEA program and the institution's third-party servicer, if any, shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, and the institution's accrediting agency, in the conduct of audits, investigations, program reviews, or other reviews authorized by law.

(2) The institution and servicer must cooperate by—

(i) Providing timely access, for examination and copying, to requested records, including but not limited to computerized records and records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any title IV, HEA program funds, and to any pertinent books, documents, papers, or computer programs; and

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the title IV, HEA programs for the purpose of obtaining relevant information.

(3) The Secretary considers that an institution or servicer has failed to provide reasonable access to personnel under paragraph (f)(2)(ii) of this section if the institution or servicer—

(i) Refuses to allow those personnel to supply all relevant information;

(ii) Permits interviews with those personnel only if the institution's or servicer's management is present; or

(iii) Permits interviews with those personnel only if the interviews are tape recorded by the institution or servicer.

(4) Upon request of the Secretary, or a lender or guaranty agency in the case of a borrower under the FFEL Program, an institution promptly shall provide the requester with any information the institution has respecting the last known address, full name, employer, and employer address of a recipient of title IV funds who attends or attended the institution.

(Authority: 20 U.S.C. 1070a, 1070b, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087, 1087a et seq., 1087cc, 1087hh, 1088, 1094, 1099c, 1141, 1232f; 42 U.S.C. 2753; and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

§ 668.25 [Amended]

3. Section 668.25(c)(4)(i) is amended by removing ''§ 668.23(h)'' and adding, in its place, ''§ 668.24''.

§ 668.26 [Amended]

4. Section 668.26(b)(3) is amended by removing the word ''five'' and adding, in its place, the word ''three''.

PART 674—FEDERAL PERKINS LOAN PROGRAM

5. The authority citation for Part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

6. Section 674.19 is amended by revising paragraph (d); removing paragraph (e)(4)(v) and redesignating paragraph (e)(4)(vi) as paragraph (e)(4)(v); and revising paragraphs (e)(1) and (e)(3), and the heading of paragraph (e)(4) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(d) *Records and reporting.* (1) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(2) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(e) * * *

(1) *Records.* An institution shall follow the records retention and examination provisions in this part and in 34 CFR 668.24.

* * * * *

(3) *Period of retention of repayment records.* An institution shall retain repayment records, including cancellation and deferment requests, for at least three years from the date on which a loan is assigned to the Department of Education, canceled, or repaid.

(4) *Manner of retention of promissory notes and repayment schedules.*

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

7. The authority citation for Part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756b, unless otherwise noted.

8. Section 675.19 is amended by removing paragraphs (b)(2)(v) through (b)(2)(vii), (b)(4), (b)(5), and (c); adding the word ''and'' at the end of paragraph (b)(2)(iii); removing the semicolon at the end of paragraph (b)(2)(iv), and adding, in its place, a period; and revising paragraph (b)(1) to read as follows:

§ 675.19 Fiscal procedures and records.

* * * * *

(b) * * * (1) An institution shall follow the records retention and examination provisions in this part and in 34 CFR 668.24.

* * * * *

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

9. The authority citation for Part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

10. Section 676.19 is amended by removing paragraph (c); and revising paragraph (b) to read as follows:

§ 676.19 Fiscal procedures and records.

* * * * *

(b) *Records and reporting.* (1) An institution shall follow the records retention and examination provisions in this part and in 34 CFR 668.24.

(2) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

11. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

12. Section 682.414 is amended by revising paragraph (a)(2); redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively; adding a new paragraph (a)(3); removing the words ''paragraphs (a)(3)(ii) (C)–(K) of this section on microfilm, optical disk, or other machine readable format'' in redesignated paragraph (a)(5)(i), and adding, in its place, ''paragraphs (a)(4)(ii) (C)–(K) of this section in accordance with 34 CFR Part 668''; removing paragraph (c) introductory text; removing paragraphs (c)(1) and (c)(2); redesignating paragraph (c)(3) as (c)(1); and adding a new paragraph (c)(2) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section, the guaranty agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. However, in particular cases the Secretary may require the retention of records beyond this minimum period. For the purpose of this section, the term ''paid in full'' includes loans paid by the Secretary due to the borrower's death (or student's death in the case of a PLUS loan), the borrower's permanent and total disability or bankruptcy, the discharge of the borrower's loan obligation because of attendance at a closed school, or because the student's eligibility to borrow had been falsely certified by the school.

(3) A guaranty agency shall retain a copy of the audit report required under Sec. 682.305(c) for not less than five years after the report is issued.

* * * * *

(c) *Inspection requirements.* (1) * * *

(2) For purposes of complying with this paragraph, references to an institution in 34 CFR 668.24(f)(1) through (3) shall mean a guaranty agency or its agent.

13. Section 682.610 is amended by revising paragraphs (a) and (b); removing the word ''or'' at the end of paragraph (c)(2)(ii); removing the period at the end of paragraph (c)(2)(iii), and adding, in its place, ''; or''; redesignating paragraph (f)(2) as paragraph (c)(2)(iv); removing the words ''the school shall notify the holder of the loan within 30 days thereafter, either directly or through the guaranty agency'' in redesignated paragraph (c)(2)(iv); and removing paragraphs (d), (e), and (f) to read as follows:

§ 682.610 Administrative and fiscal requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668;

(2) Follow the records retention and examination provisions in this part and in 34 CFR 668.24; and

(3) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the lender, which includes—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of enrollment for which the loan was intended; and

(4) In the case of a Stafford or SLS loan—

(i) For loans delivered to the school by check, the date the school endorsed each loan check;

(ii) The date or dates of delivery of the loan proceeds by the school to the student; and

(iii) For loans delivered by electronic funds transfer, a copy of the student's written authorization required under § 682.604(c)(3) to transfer the initial and subsequent disbursements of each FFEL program loan.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

14. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

15. Section 685.309 is amended by revising paragraphs (a)(1), (c), and (d); removing paragraphs (e), (f), and (g); redesignating paragraphs (h), (i), and (j) as paragraphs (e), (f), and (g), respectively, to read as follows:

§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) * * *

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in this part and in 34 CFR part 668; and

* * * * *

(c) *Record retention requirements.* An institution shall follow the records retention and examination requirements in this part and in 34 CFR 668.24.

(d) *Accounting requirements.* A school shall follow accounting requirements in 34 CFR 668.24(b).

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

16. The authority citation for Part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

17. Section 690.81 is amended by revising paragraph (a) to read as follows:

§ 690.81 Fiscal control and fund accounting procedures.

(a) An institution shall follow provisions for maintaining general fiscal records in this part and in 34 CFR 668.24(b).

* * * * *

18. Section 690.82 is revised to read as follows:

§ 690.82 Maintenance and retention of records.

(a) An institution shall follow the records retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a, 1232f)

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Part V

Postal Service

39 CFR Part 111

Miscellaneous Revisions to Standards for Mail Preparation; Final Rule

POSTAL SERVICE

39 CFR Part 111

Miscellaneous Revisions to Standards for Mail Preparation

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth revised Domestic Mail Manual (DMM) standards regarding several aspects of mail preparation. Each of these revisions is a relaxation of current standards and allows mailers immediate access to a simplified preparation method not currently permitted.

EFFECTIVE DATE: August 23, 1996, for 3-digit carrier routes trays; October 15, 1996, for 5-digit scheme sortation; October 1, 1996, for all other revisions.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, (202) 268–6351, for 5-digit scheme sort; Leo F. Raymond, (202) 268–5199, for other information.

SUPPLEMENTARY INFORMATION: On March 12, 1996, the Postal Service published a final rule in the Federal Register setting forth the Domestic Mail Manual (DMM) standards implementing phase one of Classification Reform as of July 1, 1996 (61 FR 10068–10217). Comparable standards for phase two were published on August 15, 1996, to be effective October 6, 1996 (61 FR 42464–42489).

Included in each of these rules (which affected primarily commercial or nonprofit mailers, respectively) were extensive revised standards for mail preparation. Experience with those standards in the weeks since July 1 has enabled the Postal Service to identify aspects that can be simplified further, in part based on observations and suggestions presented by customers.

All the DMM revisions described below amend both final rules noted earlier (i.e., for commercial mail as of July 1 and for nonprofit mail effective October 6) as of the dates shown. Nonprofit mailers using the option of preparing mail under the reformed rules (as announced in the March 12 final rule) may adopt these new options accordingly. Where noted, these amendments are implemented as options so that mailers can best determine how to balance production cost, rate eligibility, and service.

Because the revisions described below often separately amend or redesignate the same sections of the DMM, this final rule has aggregated them for simultaneous announcement in order to avoid the confusion that would occur where the individual amendments conflicted.

The Postal Service has determined not to issue a proposed rule for comment because the major DMM revisions implemented by this final rule represent added options for mailers that are relaxations of current standards and are neither new mail preparation burdens on mailers nor impediments to access to any rate of postage.

Accordingly, the Postal Service is adopting the DMM revisions described below to allow the following simplified preparation options to customers.

1. DMM E140.2.1a, E230.2.2a, E630.2.8a, E640.2.5, M020.2.1c, M032.1.3, M200.2.2, M200.4.1c, M200.4.2e, M620.2.2b, M620.3.1c, M620.3.2e, M810.1.4, M810.1.5, M810.2.1, M810.2.2c, M810.2.3c, P012.2.2c(2), P012.2.2c(3), and P012.2.4 are amended effective August 23, 1996, to allow an option for the preparation of letter-size mail in 3-digit carrier routes trays at the applicable carrier route presort rates. For letter-size mail, the standards implemented for Classification Reform specified the exclusive use of trays, ending the previously prescribed use of sacks for certain letter-size mailings. In general, Classification Reform also sought to apply identical standards to similar mail regardless of class; this objective was largely achieved for carrier route rate mail. As a result, all carrier route rate letter-size mail was subject to two-step preparation: first, the preparation of full trays for individual carrier routes, then preparation of remaining qualifying volume (subject to a six-piece minimum for Periodicals or a 10-piece minimum for First-Class Mail and Standard Mail) in carrier route packages that are placed in 5-digit trays. Under this standard, a 5-digit tray is required on each occasion that carrier route presort mail remains for any route in the corresponding 5-digit area, regardless of the physical volume that mail represents.

In practice, the net effect of these standards has often been a significant increase in tray usage to transport relatively small amounts of mail because individual trays were prepared to carry one or two packages of carrier route sorted mail for a 5-digit area. In turn, this has impacted mailer production line speed and capacity, equipment supplies, and vehicle utilization.

Although the Postal Service had implemented this rule to optimize the movement of carrier route mail deep into its network, thus minimizing the impact of package and tray handling costs on carrier route rates, and although it anticipated some increase in low-volume trays and an equivalent loss of vehicle cube utilization, actual experience has been less favorable than expected.

In response, the Postal Service collaborated with mailers to formulate a solution to this condition to balance mailer production costs and postal processing efficiencies as much as possible. As a result of this collaboration, the Postal Service has decided to establish, through this final rule, a 3-digit level for tray preparation as an optional step available to all mailers preparing letter-size mail eligible for and claimed at any post-Classification Reform carrier route rate. This final rule also amends the preparation standards for 5-digit mixed carrier routes trays to optimize their preparation while retaining service-related choices for mailers.

As shown in the DMM standards below, mailers will still be required to prepare a direct carrier route tray when sufficient pieces are available to physically fill such a tray. However, preparation of a 5-digit mixed carrier routes tray will now be required only if there are sufficient pieces in carrier route packages to physically fill a 1-foot or 2-foot tray to the corresponding 5-digit ZIP Code destination. A 5-digit mixed carrier routes tray with less volume, but at least one carrier route package, will be allowed at the mailer's option, such as for service reasons. Under the option effective with this final rule, mailers may prepare a 3-digit mixed carrier routes tray when it will contain at least one carrier route package for each of two or more 5-digit ZIP Code areas. Because the objective of these revised standards is the reduction in the number of less-than-full trays, a 3-digit tray will be permissible only when it represents the consolidation of the content of two or more 5-digit trays that would be otherwise required. Therefore, a 3-digit mixed carrier routes tray that contains mail only for a single 5-digit area is not allowed.

In addition, because the content of a 3-digit mixed carrier routes tray requires additional processing before reaching the delivery unit, mail placed in 3-digit carrier routes trays is not eligible for destination delivery unit discounts.

2. DMM E140.2.1b, E240.2.1a, E240.2.1b, E240.3.2a, E640.1.3a, M011.1.2d, M011.1.3g, M032.1.3, M810.2.2d, M810.2.3d, M810.3.1a, M810.3.2a, and P012.2.4 are amended effective October 15, 1996, to make a 5-digit scheme sort option available for automation rate letter-size mail. Separate 5-digit ZIP Codes that are processed by the Postal Service on the same incoming secondary barcode sorter scheme, and that meet other Postal Service criteria will be identified as 5-

digit schemes on the Postal Service's City State File that is provided with Address Information System products. If the mailer has 150 or more pieces in total for any or all of the 5-digit ZIP Codes that comprise a single 5-digit scheme group, those pieces may qualify for the 5-digit automation letter rate applicable to the class of the mailing if all pieces for the individual 5-digit ZIP Code areas that form the scheme group are sorted together in the same tray(s) labeled to the 5-digit scheme destination.

The 5-digit ZIP Code to use on Line 1 of 5-digit scheme tray labels is also contained in the City State File; the city name used on Line 1 must be the preferred last line for the 5-digit ZIP Code in the City State File. Line 2 of the label must contain the class of mail abbreviation ''LTRS BC'' and ''5D SCHEME.'' The applicable content identifier number (CIN) for the 5-digit scheme trays for each class must be used as shown in the revised DMM information below.

The 5-digit scheme combinations will be updated with each bimonthly release of the City State File. Although monthly updates of the City State File will continue to be released, the 5-digit scheme information contained in the City State File will be revised only with the bimonthly updates.

Mailings prepared according to the 5-digit schemes in the City State File must be entered into the mail no later than 90 days after the release date of the bimonthly City State File used to obtain the scheme information. For example, mail matched to the October release of the City State File (or the November 15 monthly file update) may be entered into the mail from October 15 through January 15. Beginning with mail entered on January 16, the 5-digit scheme sort information must be based on the December 15 release of the City State File, and so forth. The following table shows the dates of City State File releases and the periods during which mailings may be entered that were prepared using 5-digit scheme information contained in the corresponding releases.

Product release (bimonthly)	Product release (monthly)	Mailing dates
February 15	March 15	February 15–May 15.
April 15	May 15	April 15–July 15.
June 15	July 15	June 15–September 15.
August 15	September 15	August 15–November 15.
October 15	November 15	October 15–January 15.
December 15	January 15	December 15–March 15.

As detailed by the DMM standards prescribed below, use of the 5-digit scheme sortation is optional. The mailer may choose to prepare all possible 5-digit scheme sorts or any lesser number of scheme groups. Whenever the mailer can prepare 150 or more pieces to one or more of the 5-digit ZIP Codes that are part of a single 5-digit scheme group, those pieces are eligible for the 5-digit automation rate applicable to the class of mail. Documentation must correctly reflect 5-digit scheme trays by using the abbreviation ''5DGS'' and individually listing each 5-digit ZIP Code and corresponding piece count under the group destination column.

3. DMM E630.2.2 is amended effective October 1, 1996, to clarify the standard for the maximum size of nonautomation rate Enhanced Carrier Route Standard Mail. The language appearing in DMM Issue 50 (the product of rulemaking related to Classification Reform but based on standards predating Reform) states that ''flats may not be more than 11–¾ inches wide, 14 inches long, or ¾ inch thick.'' Although this is true, the limitation actually applies generally to all nonautomation rate Enhanced Carrier Route Standard Mail other than merchandise samples mailed with detached address labels. Because of the current wording, some mailers have incorrectly concluded that pieces that are not flats are no longer subject to the cited size limits. The revised DMM section shown below does not represent a new or stricter standard, rather a more accurate restatement of the standard that has been in effect for many years.

4. DMM M033.2.1f is amended effective October 1, 1996, to allow mailers the option of using a 1-foot or 2-foot MM tray when it is adequate to contain the mail that otherwise would be placed in a 2-foot EMM tray. The larger EMM tray is specified by standard as the correct tray to use for pieces whose height or width exceeds the corresponding dimensions of the smaller MM tray. However, unlike MM trays, EMM trays are available in only a 2-foot length, and some mailers have found them too large for the quantity of mail prepared to some destinations, such as overflow or less-than-full tray volumes prepared in packages. Although some mailers may find it undesirable to work with multiple tray sizes, whether for production or pallet preparation reasons, others have expressed a preference for the option to use a smaller tray when it would suffice to carry the available mail. Accordingly, the Postal Service is amending its standards to allow this option when useful from the customer's perspective, when it does not create processing inefficiencies for the Postal Service, and when use of the smaller tray does not require the mail to be bent or deformed to fit.

5. DMM M120.2.8 is amended effective October 1, 1996, to correct the Line 2 label information for Priority Mail. This information is used by mailers to indicate the class, processing category, and preparation of the mail in the container to which the label is affixed. Although the standards in DMM M120 have long specified the use of ''PRIORITY MAIL'' on the second line, the correct wording in that instance should be shown as ''PRIORITY.'' The correct marking on pieces claimed at that rate has been and remains either ''Priority'' or ''Priority Mail'' as shown in DMM M120.2.2. Mailers whose label stock includes ''PRIORITY MAIL'' on the second line may exhaust that supply.

6. DMM M200.1.4, M200.2.4, M200.3.1, M820.1.6, and M820.3.0 are amended effective October 1, 1996, to allow the optional preparation of Periodicals in packages and sacks containing fewer than six pieces each when such preparation is beneficial to service in the opinion of the publisher/mailer. The standards previously specified in the aforementioned final rules regarding Periodicals had consistently prescribed six pieces as the fewest that could be prepared as a package to any required or optional level of presort. Similarly, sacks in package-based mailings (i.e., all flat-size mailings) were generally required to contain at least one six-piece package.

Under the revisions to M200 detailed below, publishers of sacked, package-based Periodicals have the option of preparing packages containing fewer

than six addressed pieces when those packages are sorted to the carrier route, 5-digit, or 3-digit level and correctly placed in carrier route, 5-digit carrier routes, 5-digit, or 3-digit sacks. These pieces are subject to Basic rates, but may claim the destination delivery unit or destination SCF discount under the corresponding standards.

This option is limited to sacked package-based (flat-size) publications because those criteria describe those publications typically prepared in sacks of fewer than six pieces each. It is not offered to publications prepared in trays because the use of a tray for five or fewer pieces would result in excessive transportation and handling costs. Further, automation letter-size mail is not allowed this option because the standards applicable to such mail do not include package preparation and specify a 150-piece minimum per tray. It is anticipated that automation letter-size Periodicals can experience satisfactory delivery performance without requiring the level of preparation being allowed to publications not as amenable to automated handling.

This option is limited to the sortation levels cited above because finer levels of presort are consistent with the reduction of handling (and related delays and costs) that otherwise would inhibit attainment of the desired service. It is not being extended to other levels of packages or sacks because their preparation does not comport with the reduced handling that is fundamental to quicker service. This option was introduced at the customers' request to allow them to evaluate and balance their production costs and service requirements.

7. DMM M630.4.2 is amended effective October 1, 1996, to establish an abbreviated rate marking for Special Standard Mail. Current standards prescribe using the full name of the subclass on each piece claimed at the corresponding rate, but customer systems commonly need to abbreviate rate markings based on equipment or space limitations. Therefore, to accommodate these circumstances while preserving a consistent and recognizable marking for the mail, the Postal Service is allowing the optional use of ''SPEC STD'' in lieu of the full ''Special Standard Mail'' marking. The optional abbreviation may be preceded by ''Presorted'' on pieces claimed at the corresponding rate.

8. Miscellaneous insubstantive revisions for conformance or clarity are also made in E140.2.1c, E240.2.1c, E240.2.1d, E240.3.2b, M011.1.3h, M011.1.3i, M200.4.1b, M620.1.5, M620.3.1b, M810.2.2b, M810.2.3e, and M810.3.2b.

All the foregoing revisions will appear in DMM Issue 51.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

E ELIGIBILITY

* * * * *

E100 First-Class Mail

* * * * *

E140 Automation Rates

* * * * *

2.0 RATE APPLICATION

2.1 Letters or Cards

[Revise 2.1a through 2.1c to read as follows:]

First-Class automation rates apply to each piece that is sorted under M810 into the corresponding qualifying groups:

a. Pieces in full carrier route trays, in carrier route groups of 10 or more pieces each placed in 5-digit carrier routes trays, or in carrier route packages of 10 or more pieces each placed in 3-digit carrier routes trays, qualify for the Carrier Route automation rate. (Preparation to qualify for that rate is optional and need not be done for all carrier routes in a 5-digit area.)

b. Groups of 150 or more pieces in 5-digit or 5-digit scheme trays (and all pieces in one less-than-full overflow tray) qualify for the 5-Digit automation rate. (Preparation to qualify for that rate is optional and need not be done for all 5-digit or 5-digit scheme destinations.)

c. Groups of 150 or more pieces in 3-digit or 3-digit scheme trays (and all pieces in one less-than-full overflow tray) qualify for the 3-Digit automation rate.

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E200 Periodicals

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E230 Nonautomation Rates

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2.0 CARRIER ROUTE RATES

* * * * *

2.2 Eligibility

[Revise 2.2a to read as follows:]

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M200. Carrier route sort need not be done for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

a. The basic carrier route rate applies to copies in carrier route packages of six or more letter-size pieces each that are sorted to carrier route, 5-digit carrier routes, or 3-digit carrier routes trays; and six or more flat-size pieces each that are sorted to carrier route or 5-digit carrier routes sacks.

* * * * *

E240 Automation Rates

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2.0 RATE APPLICATION—EXCEPT CLASSROOM PERIODICALS

2.1 Letters

[Revise 2.1a through 2.1d to read as follows:]

Automation rates apply to each piece that is sorted under M810 into the corresponding qualifying groups:

a. Groups of 150 or more pieces in 5-digit or 5-digit scheme trays (and all pieces in one less-than-full overflow tray) qualify for the 5-Digit automation in-county rate.

b. Groups of 150 or more pieces in 5-digit, 5-digit scheme, or unique 3-digit trays (and all pieces in one less-than-full overflow tray) qualify for the 3/5 automation Regular or Nonprofit rate, as applicable.

c. Groups of 150 or more pieces in unique 3-digit trays (and all pieces in one less-than-full overflow tray) qualify for the 3-Digit automation in-county rate.

d. Pieces for a unique 3-digit destination that is part of a 3-digit scheme group in L003 qualify for the 3-Digit automation in-county rate or the 3/5 automation Regular or Nonprofit rate, as applicable, when placed in a 3-digit scheme tray if grouped separately from pieces for other 3-digit areas.

* * * * *

[Revise the heading of 3.0 to read as follows:]

3.0 RATE APPLICATION—CLASSROOM PERIODICALS ONLY

* * * * *

3.2 Barcoded Rates

[Revise 3.2a and 3.2b to read as follows:]

Barcoded Classroom Periodicals must meet the basic standards in 1.0. Barcoded rates apply to each letter-size piece that is sorted under M810 into the corresponding qualifying groups:

a. Groups of 150 or more pieces in 5-digit or 5-digit scheme trays (and all pieces in one less-than-full overflow tray) qualify for the 5-Digit Barcoded rate.

b. Groups of 150 or more pieces in unique 3-digit trays (and all pieces in one less-than-full overflow tray) qualify for the 3-Digit Barcoded rate.

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E600 Standard Mail

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E630 Nonautomation Presort Rates

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2.0 ENHANCED CARRIER ROUTE RATES

* * * * *

2.2 Flats and Merchandise Samples

[Revise 2.2 to read as follows:]

Enhanced Carrier Route rate mail may not be more than 11¾ inches wide, 14 inches long, or ¾ inch thick. Merchandise samples with detached address labels may exceed these dimensions if the labels meet the standards in A060.

* * * * *

2.8 Basic Rates

[Revise 2.8a to read as follows:]

Basic (nonautomation) Carrier Route rates apply to each piece that is sorted under M620 into the corresponding qualifying groups:

a. Letter-size pieces in a full carrier route tray, or in a carrier route package of 10 or more pieces placed in a 5-digit carrier routes or 3-digit carrier routes tray.

* * * * *

E640 Automation Rates

1.0 REGULAR AND NONPROFIT RATES

* * * * *

1.3 Rate Application—Letters and Cards

[Revise 1.3a to read as follows:]

Automation rates apply to each piece that is sorted under M810 into the corresponding qualifying groups:

a. Groups of 150 or more pieces in 5-digit or 5-digit scheme trays (and all pieces in one less-than-full overflow tray) qualify for the 5-Digit automation rate. (Preparation to qualify for that rate is optional and need not be done for all 5-digit or 5-digit scheme destinations.)

* * * * *

2.0 ENHANCED CARRIER ROUTE RATES

* * * * *

2.5 Rate Application

[Revise 2.5 to read as follows:]

Automation Basic Carrier Route rates apply to each piece that is sorted under M810 into full carrier route trays, in carrier route groups (or packages, where appropriate) of 10 or more pieces each placed in 5-digit carrier routes trays, or in carrier route packages of 10 or more pieces each placed in 3-digit carrier routes trays. (Preparation to qualify for that rate is optional and need not be done for all carrier routes in a 5-digit area.)

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.2 Presort Levels

[Redesignate current 1.2d through 1.2l as 1.2e through 1.2m, respectively; change the reference in 1.2f from ''1.3g'' to ''1.3h''; and add new 1.2d to read as follows:]

Terms used for presort levels are defined as follows:

* * * * *

d. 5-digit scheme: the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Code areas processed by the USPS as a single scheme, as shown in the USPS City State File (see 1.3g).

* * * * *

1.3 Preparation Instructions

[Redesignate current 1.3g through 1.3o as 1.3h through 1.3p, respectively; add new 1.3g; and revise redesignated 1.3h and 1.3i to read as follows:]

For purposes of preparing mail:

* * * * *

g. A 5-digit/scheme sort yields 5-digit scheme trays for those 5-digit ZIP Codes identified in the USPS City State File and 5-digit trays for other areas. Mail prepared using 5-digit scheme sort must be entered no later than 90 days after the release date of the City State File used to obtain the scheme information (see A950). The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 5-digit ZIP Code required. Trays prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. The 5-digit scheme sort is *always optional,* including when 5-digit sortation is required for rate eligibility; need not be used for all 5-digit ZIP Codes that are part of a scheme; is available only for automation rate letter-size First-Class Mail, Periodicals, and Standard Mail; and may not be used by mail at other rates. Scheme sortation is not available for ZIP+4 Classroom Periodicals.

h. A 3-digit/scheme sort yields 3-digit scheme trays for those 3-digit ZIP Code prefixes listed in L003 and 3-digit trays for other areas. The 3-digit ZIP Code prefixes in each scheme are treated as a single presort destination subject to a single minimum tray volume, with no further separation by 3-digit prefix required. Trays prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit areas are still considered 3-digit scheme sorted and are labeled accordingly. The 3-digit/scheme sort is required for automation rate letter-size First-Class Mail, Periodicals, and Standard Mail and may not be used by mail at other rates. Scheme sortation is not available for ZIP+4 Classroom Periodicals.

i. An origin 3-digit (or origin 3-digit/scheme) tray/sack contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit/scheme) area processed by the SCF in whose service area the mail is verified. If more than one 3-digit (or 3-digit/scheme) area is served, as indicated in L005, a separate tray must be prepared for each.

* * * * *

M020 Packages and Bundles

* * * * *

2.0 ADDITIONAL STANDARDS—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

2.1 Cards and Letter-Size Pieces

[Revise 2.1c to read as follows:]

Cards and letter-size pieces are subject to these specific packaging standards:

* * * * *

c. Packages must be prepared for mail in all less-than-full and 3-digit carrier routes trays; for nonupgradable Presorted First-Class Mail and nonupgradable Standard Mail (A); and for nonautomation Periodicals.

* * * * *

M030 Containers

* * * * *

M032 Barcoded Labels

1.0 BARCODED TRAY LABELS

* * * * *

1.3 Printed Text Lines

[Amend Exhibit 1.3c by adding the following content identifier numbers (CINs) and corresponding codes for mail type:]

CIN	Mail type
023	FCM LTRS 3D CR–RTS BC.
079	FCM LTRS BC 5D SCHEME.
112	NEWS LTRS 3D CR–RTS.
119	NEWS LTR BC 5D SCHEME.
219	PER LTRS BC 5D SCHEME.
229	PER LTRS 3D CR–RTS.
406	STD LTRS 3D CR–RTS.
408	STD LTRS 3D CR–RTS BC.
503	STD LTRS BC 5D SCHEME.

* * * * *

M033 Sacks and Trays

* * * * *

2.0 FIRST-CLASS MAIL, PERIODICALS, AND BULK RATE STANDARD MAIL (A)

2.1 Letter Tray Preparation

[Revise 2.1f to read as follows:]

Pieces must be prepared to result in the fewest practical number of packages (where required) and trays to contain the mail sorted to a destination. Letter tray preparation uses terms defined in M011 and is subject to these further standards:

* * * * *

f. Subject to availability, standard MM trays must be used for all letter-size mail, *except that* extended MM (EMM) trays must be used when available for letter-size mail that exceeds the height or width (inside dimensions) of MM trays defined in 1.3. When EMM trays are not available, such pieces must be placed in MM trays, angled back and/or placed upright perpendicular to the length of the tray in row(s) to preserve their orientation. At the mailer's option, a 1-foot or 2-foot MM tray (as appropriate) may be used when adequate to contain mail that otherwise would be placed in a less-than-full 2-foot EMM tray if that mail fits without being bent or deformed.

* * * * *

M120 Priority Mail

* * * * *

2.0 PRESORTED RATE

* * * * *

2.8 Line 2

[Revise 2.8 to read as follows:]

Line 2: ''PRIORITY'' followed by ''LTRS,'' ''FLTS,'' or ''PARCELS,'' as applicable.

* * * * *

M200 Periodicals (Nonautomation)

1.0 BASIC STANDARDS

* * * * *

[Add new 1.4 to read as follows:]

1.4 Low-Volume Packages and Sacks

As a general exception to 2.4b through 2.4d and 3.1a through 3.1d, Periodicals may be prepared in packages containing fewer than six pieces, and in sacks containing as few as one such package, when the publisher determines that such preparation improves service.

2.0 PACKAGE PREPARATION

* * * * *

2.2 Carrier Route Packages

[Revise 2.2 to read as follows:]

Carrier route packages may be placed only in carrier route or 5-digit carrier routes sacks or trays or 3-digit carrier routes trays. A mailer may choose to prepare carrier route packages at a higher level of route saturation (e.g., only if there are at least 15 pieces per route). Under this option, smaller packages of six or more pieces per carrier route not prepared for carrier route rates must be prepared for and paid at another applicable rate.

* * * * *

2.4 Package Preparation

[In 2.4b, 2.4c, and 2.4d, add ''except under 1.4'' after ''fewer not permitted.''']

3.0 SACK PREPARATION (FLAT-SIZE PIECES ONLY)

3.1 Sack Preparation

[In 3.1a through 3.1d, add ''except under 1.4'' after ''one six-piece package minimum.'']

* * * * *

4.0 TRAY PREPARATION (LETTER-SIZE PIECES ONLY)

4.1 Tray Preparation

[Revise 4.1b; redesignate 4.1c through 4.1f as 4.1d through 4.1g, respectively; and add new 4.1c to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

b. 5-digit carrier routes (carrier route packages only): required for rate eligibility if full tray, optional with minimum one six-piece package; for Line 1, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

c. 3-digit carrier routes (carrier route packages only): optional with minimum one six-piece package for each of two or more 5-digit areas; for Line 1, use the city/state/ZIP shown in L002, Column A, that corresponds to the 3-digit ZIP Code prefix of packages.

* * * * *

4.2 Line 2

[Redesignate 4.2e and 4.2f as 4.2f and 4.2g, respectively; and add new 4.2e to read as follows:]

Line 2: PER or NEWS (as applicable), LTRS, and:

* * * * *

e. 3-digit carrier routes trays: 3D CR–RTS.

* * * * *

M620 Enhanced Carrier Route Standard Mail

1.0 BASIC STANDARDS

* * * * *

[Add new 1.5 to read as follows:]

1.5 Low-Volume Destinations

As a general exception to 2.0 through 4.0, a package with fewer than 10 pieces and either a less-than-full tray or a sack with fewer than 125 pieces *and* less than 15 pounds of pieces may be prepared to a carrier route when the Saturation rate is claimed for the contents and the applicable density standard is met.

2.0 PACKAGE PREPARATION

* * * * *

2.2 Package Preparation

[Revise 2.2b to read as follows:]

Package size: carrier route; required (10-piece minimum, fewer not permitted). Carrier route package labels are based on the sack or tray level in which placed:

* * * * *

b. Packages in 5-digit carrier routes trays and sacks and in 3-digit carrier routes trays must have a facing slip unless the pieces in the package show a carrier route information line or an optional endorsement line.

3.0 TRAY PREPARATION—LETTER-SIZE PIECES

3.1 Tray Preparation

[Revise 3.1b and add new 3.1c to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

b. 5-digit carrier routes: required if full tray, optional with minimum one 10-piece package; for Line 1, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

c. 3-digit carrier routes: optional with minimum one 10-piece package for each of two or more 5-digit areas; for Line 1, use the city/state/ZIP shown in L002, Column A, that corresponds to the 3-digit ZIP Code prefix of packages.

3.2 Line 2

[Add new 3.2e to read as follows:]

Line 2: STD LTRS and:

* * * * *

e. 3-digit carrier routes trays: 3D CR-RTS.

* * * * *

M630 Standard Mail (B)

* * * * *

4.0 SPECIAL STANDARD MAIL

* * * * *

4.2 Marking

[Revise 4.2 to read as follows:]

Each piece claimed at Special Standard Mail single-piece rates must be marked ''Special Standard Mail'' or ''SPEC STD.'' Each piece claimed at Presorted Special Standard Mail rates must be marked ''Presorted Special Standard Mail'' or ''Presorted SPEC STD.'' Pieces not marked as required are treated as single-piece parcel post, subject to additional postage as necessary.

* * * * *

M800 All Automation Mail

M810 Letter-Size Mail

1.0 BASIC STANDARDS

[Remove 1.6 and redesignate current 1.7 as 1.6; revise 1.4 and 1.5 to read as follows:]

* * * * *

1.4 General Preparation

Grouping, packaging, and labeling are not generally required or permitted, except packaging is required in any mailing consisting entirely of card-size pieces and for pieces in overflow, less-than-full, and 3-digit carrier routes trays; pieces must be grouped (or packaged, if applicable) as specified in 2.0 and 3.0; package labels are required only for Periodicals.

1.5 Carrier Route

Carrier route groups (or packages, if applicable) may be placed only in carrier route, 5-digit carrier routes, or 3-digit carrier routes trays. Preparation of mail to qualify for automation carrier route rates is optional for First-Class Mail under E140 and Standard Mail (A) under E640.

* * * * *

2.0 PREPARATION—FIRST-CLASS MAIL AND STANDARD MAIL (A)

2.1 Carrier Route Pieces

[Revise 2.1 to read as follows:]

Grouping size, preparation sequence, and labeling: carrier route (only); required (10-piece minimum; fewer not permitted); use an optional endorsement line or carrier route information line. Group pieces by carrier route in full 5-digit carrier routes trays, using separator cards under M020, not packaging. Package pieces by carrier route in less-than-full 5-digit carrier routes trays and in all 3-digit carrier routes trays.

2.2 Tray Preparation

[Revise 2.2b; redesignate 2.2c through 2.2f as 2.2d through 2.2g, respectively; add new 2.2c; and revise redesignated 2.2d to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

b. 5-digit carrier routes (carrier route pieces/packages only): required for rate eligibility if full tray, optional with minimum one 10-piece package; for Line 1, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

c. 3-digit carrier routes (carrier route packages only): optional with minimum one 10-piece package for each of two or more 5-digit areas; for Line 1, use the city/state/ZIP shown in L002, Column A, that corresponds to the 3-digit ZIP Code prefix of packages.

d. 5-digit/scheme: optional, but 5-digit trays required for rate eligibility (150-piece minimum); overflow allowed; for 5-digit trays, use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the prefixes under M031; for optional 5-digit scheme trays, use destination shown in the current City State File for Line 1.

* * * * *

2.3 Line 2

[Redesignate 2.3c and 2.3d as 2.3e and 2.3f, respectively; add new 2.3c and 2.3d; and revise redesignated 2.3e to read as follows:]

Line 2: FCM or STD (as appropriate), LTRS BC, and:

a. For carrier route trays: route type and number.

b. For 5-digit carrier routes trays: CR-RTS.

c. For 3-digit carrier routes trays: 3D CR-RTS.

d. For 5-digit scheme trays: 5D SCHEME.

e. For 3-digit scheme trays: SCHEME (or as shown in L002, Column B).

f. For mixed AADC trays: WKG.

3.0 PREPARATION—PERIODICALS

3.1 Tray Preparation

[Revise 3.1a to read as follows:]

Tray size, preparation sequence, and labeling:

a. 5-digit/scheme: 5-digit trays required (150-piece minimum), 5-digit scheme trays optional (150-piece minimum) except for ZIP+4 Classroom Periodicals; overflow allowed; for required 5-digit trays and ZIP+4 Classroom Periodicals, use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the prefixes under M031; for optional 5-digit scheme trays, use destination shown in the current City State File for Line 1.

* * * * *

3.2 Line 2

[Redesignate 3.2a and 3.2b as 3.2b and 3.2c, respectively; add new 3.2a; and revise redesignated 3.2b to read as follows:]

Line 2: PER or NEWS (as appropriate), LTRS BC (except LTRS UPGR for ZIP+4 Classroom Periodicals), and:

a. For 5-digit scheme trays: 5D SCHEME.

b. For 3-digit scheme trays: SCHEME (or as shown in L002, Column B).

c. For mixed AADC trays: WKG.

* * * * *

M820 Flat-Size Mail

1.0 BASIC STANDARDS

* * * * *

[Add new 1.6 to read as follows:]

1.6 Exception—Periodicals

As a general exception to 3.1a, 3.1b, 3.2a, and 3.2b, Periodicals may be prepared in packages containing fewer than six pieces, and in sacks containing as few as one such package, when the publisher determines that such preparation improves service.

* * * * *

3.0 PREPARATION—PERIODICALS

[In 3.1a and 3.1b, add ''except under 1.6'' after ''fewer not permitted''; in 3.2a and 3.2b, add ''except under 1.6'' after ''one six-piece package minimum.'']

* * * * *

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

* * * * *

P012 Documentation

* * * * *

2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

* * * * *

2.2 Format and Content

[Revise 2.2c(2) and 2.2c(3) to read as follows:]

For First-Class Mail, Periodicals, and Standard Mail (A), standardized documentation includes:

* * * * *

c. For mail in trays or sacks, the body of the listing reporting these required elements:

* * * * *

(2) Tray/sack destination ZIP Code (use destination on top line of tray/sack label except that, for 3-digit carrier routes trays, list the individual 5-digit ZIP Codes contained in each tray).

(3) Group destination for automation letter mail (number of pieces for each carrier route in carrier routes trays, for each 5-digit ZIP Code in 5-digit scheme trays, for each 3-digit ZIP Code prefix in 3-digit scheme and AADC trays, and for each AADC in mixed AADC trays), or package level and package destination for automation flats and regular nonautomation presort mail (use the presort destination as described in M011).

* * * * *

2.4 Sortation Level

[Revise 2.4 to read as follows:]

The actual sortation level (or corresponding abbreviation) is used for the tray, sack, pallet, or package sortation levels required by 2.2 and shown below:

Sortation level	Abbreviation
Carrier Route	CRD
5-Digit Carrier Routes	CR5
5-Digit	5DG
5-Digit Scheme [barcoded letters]	5DGS
3-Digit Carrier Routes	CR3
3-Digit	3DG
3-Digit Scheme [barcoded letters]	3DGS
ADC	N/A
AADC	N/A
Mixed ADC	MADC
Mixed AADC	MAAD
SCF [pallets]	N/A
BMC or ASF	N/A
Mixed BMC [working]	MBMC

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–23516 Filed 9–12–96; 8:45 am]

BILLING CODE 7710–12–P

Federal Register

Friday
September 13, 1996

Part VI

Advisory Council on Historic Preservation

36 CFR Part 800

Protection of Historic Properties; Proposed Rule

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Advisory Council on Historic Preservation is proposing changes to its regulations in order to implement the 1992 amendments to the National Historic Preservation Act and to improve and streamline the regulations in accordance with the Administration's reinventing government initiatives. The proposed changes will modify the process by which Federal agencies consider the effects of their undertakings on historic properties. On October 3, 1994, the Council published for comment in the Federal Register a notice of proposed rulemaking that set forth changes to the Section 106 process. After reviewing the comments on the October 1994 proposal and in response to agency downsizing and restructuring, the Council substantially changed its proposal to better meet the streamlining goals of the Council. Therefore, the Council is publishing a new notice of proposed rulemaking. In its streamlined proposal, the Council seeks to balance the interests and concerns of various users of the Section 106 process, including Federal agencies, State Historic Preservation Officers (SHPOs), Native Americans and Native Hawaiians, industry and the public.

DATES: Comments must be received on or before November 12, 1996. The Council will provide on request an additional 30 days for an Indian tribe to submit comments. A representative of the tribal government must file a request with the Council no later than November 12, 1996.

ADDRESSES: Comments should be addressed to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, D.C. 20004. Fax 202- 606–8672. Comments may be submitted via E-Mail to achp@achp.gov.

FOR FURTHER INFORMATION CONTACT: Stephanie Woronowicz, Information Assistant, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, D.C. 20004 (202) 606–8503.

SUPPLEMENTARY INFORMATION:

I. Background

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, requires Federal agencies to take into account the effect of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment on such undertakings. Public Law 102–575 was enacted in October 1992, and contains amendments to the National Historic Preservation Act which affect the way Section 106 review is carried out under the Council's regulations. Additionally, as part of the Administration's National Performance Review and overall streamlining efforts, the Council undertook a review of the current regulatory process to identify potential changes that could improve the operation of the Section 106 process and conform it to the principles of this Administration. The Council commenced an information-gathering effort to assess the current Section 106 process and to identify desirable changes.

As a part of this effort, the Council sent a questionnaire to 1,200 users of the Section 106 process, including Federal agencies, SHPOs, State and local governments, applicants for Federal assistance, Native Americans, preservation groups, contractors involved in the process, and members of the public. The questionnaires sought opinions on the current regulatory process and ideas for enhancing the process. The Council received over 400 responses. After analyzing the responses and holding several meetings with Federal Preservation Officers and SHPOs, the Council staff presented its preliminary findings to a special Council member Task Force comprised of the Department of Transportation, the National Conference of State Historic Preservation Officers, the National Trust for Historic Preservation, and the Council's Native American representative, expert member and chairman.

The Task Force adopted the following findings and attempted to craft the regulations to reflect them: (1) Federal agencies and SHPOs should be given greater authority to conclude Section 106 review; (2) the Council should spend more time monitoring program trends and overall performance of Federal agencies and SHPOs and less time reviewing individual cases or participating in case-specific consultation; (3) Section 106 review requirements should be integrated with environmental review required by other statutes; (4) enforcement of Section 106 should be increased and specific remedies should be provided for failure to comply; and (5) there should be expanded opportunities for public involvement in the Section 106 process.

In the proposed regulations published in the Federal Register on October 3, 1994, the Council sought to meet the stated findings and objectives adopted by the Task Force. The Council received approximately 370 comments on the October 1994 proposal. Generally, commenters supported the overall goals and direction adopted by the Task Force, but found that the proposed regulations failed to implement the stated goals. Particularly, many commenters disagreed with the role of the Council as arbiter of disputes over application of the regulations, the public appeals process, and provisions dealing with enforcement. At a Council membership meeting in February 1995, the Council decided to continue its dialogue with major user groups of the Section 106 process in an effort to resolve their concerns. The Council membership also reaffirmed the objective of reducing regulatory burdens on Federal agencies and SHPOs and focussing the review process on important historic preservation issues. The Council solicited the views of users of the Section 106 process once again by convening separate focus groups with local governments, industry representatives, Native Americans, and Federal agency officials in May 1995. As a result of these meetings, and after considering the views of commenters, the Council drafted a substantially revised proposal and circulated the draft informally in July 1995 to the 370 commenters who had commented on the October 1994 notice of proposed rulemaking.

The Council received approximately 80 comments on the informally distributed draft. Generally, the commenters found the July 1995 draft to be an improvement on the October 1994 proposal. Again, however, Federal agencies noted that the Council did not go far enough in removing itself from routine cases and in bringing finality to the process. Federal agencies also remained concerned that the public participation provisions were too open-ended and inadequately defined the roles and rights of participants in the process. Federal agencies also considered the (National Environmental Policy Act (NEPA) integration section to be a step forward, but submitted that its substitution provisions should be extended to environmental assessments as well as environmental impact statements and, overall, could provide

better integration of NHPA and NEPA. In contrast, the majority of SHPOs did not want the Council to remove itself further from the Section 106 process and did not want the NEPA integration section to be extended to environmental assessments. The National Conference of State Historic Preservation Officers, as well as many of its member SHPOs, supported the public participation process as set forth in the July 1995 draft, but sought clarification on the roles and responsibilities of Federal agencies under Section 106. Industry commenters deemed the July 1995 a vast improvement over the 1994 proposal, however, they remained concerned with the appeals procedures and found the process too burdensome. Industry also remained concerned about the public participation provisions. The current proposal is an attempt to balance the many views of the Section 106 users on how to achieve the Task Force's goals while fulfilling the Council's mission of ensuring reasonable consideration of historic properties in agency decision-making.

II. Summary of Regulatory Changes

The proposed regulations would significantly modify the current Section 106 process. The regulations provide a greater opportunity for Federal agencies to resolve historic preservation issues with the SHPO and other involved parties, without direct Council involvement. As a result, the proposed regulations redefine the role of the Council to involve the Council in controversial cases where the Council's unique perspective and expertise can facilitate effective solutions. The proposed regulations also provide new flexible methods of obtaining Council comment on certain undertakings or effects.

Subpart A—Background and Policy

This Subpart adds a section which describes the three methods of complying with Section 106: alternate procedures, exemptions or programmatic agreements, and general procedures set forth in Subpart B. As one of those methods, it encourages Federal agencies to meet their Section 110 (a)(2)(E) requirements by developing their own alternate procedures for compliance. This Subpart also modifies the description of the participants in the Section 106 process and the roles of the participants. Participants fall into three categories: principal parties, consulting parties, and the public. Principal parties are those with statutory responsibilities under Section 106: the Federal agency official and the Council. Consulting parties are those with consultative responsibilities under the Act: the SHPO and Indian tribes and Native Hawaiian organizations. Affected parties are those with direct legal or financial interests in the effects on undertaking on historic properties: local governments and applicants for Federal assistance or permission.. The public, under the proposed regulations, includes the general public at large and the ''interested public.'' The proposed regulations define the interested public to include individuals and organizations that have indicated to the agency official a particular interest in the effect of the undertaking. Interested public includes owners of real property affected directly by the undertaking, traditional cultural authorities, the SHPO when the Indian tribe has assumed the function of the SHPO under Section 101(d)(2) of the Act and others that request to be treated as such.

Subpart B—Section 106 Procedures

This Subpart provides the standard general procedures for compliance with the Act. It adds a new section which clarifies how a Federal agency should initiate the 106 process in order to emphasize the importance of early planning and coordination with reviews required by other statutes. By emphasizing the importance of proper initiation of the process, the Council seeks to address concerns regarding undue delay in projects. The identification step at Section 800.4 has been changed by adding two new concepts to enhance flexibility in the regulations. First, when locating historic properties, the proposed regulations provide that an agency must consider the scope and type of identification necessary based on a variety of factors, including the magnitude of the undertaking and its likely effects. It is intended that Federal agencies will focus their identification efforts on those portions of the area of potential effects most directly related to their jurisdictional or financial control. Second, the proposed regulations allow for ''phased identification'' to accommodate the practice of choosing several alternatives in a project. As specific aspects or locations of a project are determined, then the agency official completes the identification.

This Subpart also removes the separate ''effect'' determination step and now proposes combining the ''no historic properties'' finding and the ''no effect'' finding into a single ''no historic properties affected'' finding requiring 15 days for SHPO review. The agency moves directly to assessing adverse effects once it determines that historic properties may be affected. The adverse effect criteria currently in Section 800.9(b) have been revised to better define adverse effects and have been moved to Section 800.5. The current exceptions to the criteria have been transformed into ''standard treatments'' listed in Section 800.5(a)(4) with the addition of a bridge replacement standard treatment and a modification of the exception for archeological resources that clarifies the basis for using the standard treatment and ensures public dissemination of any resulting archeological studies. The proposed regulations also remove the Council from review of no adverse effect determinations and standard treatment agreements. The amendments allow Federal agencies to conclude the Section 106 process at this level without Council review, subject to specific requests for Council review of agency findings under Section 800.9(a).

The proposed regulations, in Section 800.6(a)(1), specify instances when an agency official must request the Council to become involved in the consultation to resolve adverse effects. The Council may or may not participate after receiving such a request. The proposed regulations provide that the Council may enter the consultation on its own initiative if the Council determines it is necessary to ensure that the purposes of Section 106 are met, i.e., that an agency is properly taking into account the effects of the undertaking on historic properties and affording the Council its reasonable opportunity to comment. The proposed regulations, in 800.6(b)(1)(ii), also allow any principal party to request Council involvement in the consultation. If the Council does not participate in consultation, then the Council does not review two-party agreements negotiated between the SHPO and the Federal agency, but the regulations do require Federal agencies to file copies of the agreement with the Council as a basis for general Council oversight of agency compliance with Section 106. If the SHPO and the agency cannot reach a solution, the proposed regulations require that the Council join the consultation to attempt resolution before allowing for termination of consultation and the provision of formal comments by the Council membership. The proposed regulations provide that these formal Council comments be considered by the head of the agency in accordance with Section 110(l) of the Act.

Subpart B provides a new section on coordination with the National Environmental Policy Act (NEPA). It allows for the use of the NEPA process and documentation for the preparation

of an environmental impact statement (EIS) and environmental assessment (EA) to comply with Section 106 procedures as long as the draft EIS or EA meets certain specific standards. The agency must submit the EA or draft EIS to the Council, the SHPO, other consulting parties, and the interested public during the public comment period and any agreed upon mitigation measures must be incorporated in the record of decision. The purpose of this section is to encourage the integration of the resolution of adverse effects on historic properties into agency NEPA compliance.

The proposed regulations also clarify in Section 800.9 the process for assessing certain agency findings under Sections 800.4 and 800.5. Such requests may only be made by the SHPO, another consulting party or a member of the interested public that has participated in the Section 106 process and must be made before the undertaking is approved by the agency. The proposed regulations also provide strict time limits for the Council to act on the request and provide its views to the agency official. The Council may request the agency official to delay final action for up to 30 days while the Council considers the matter, but the agency official is not required to do so.

In shifting the emphasis from Council review of individual cases to assessing the overall quality of Federal agency or SHPO performance, the proposed regulations add a provision that requires agencies to maintain documentation of actions taken in compliance with Section 106 and to provide the Council with such information upon Council request.

Section 800.10 addresses special requirements for National Historic Landmarks and remains unchanged for the most part.

Documentation standards have been clarified to provide general requirements regarding adequacy, format and confidentiality in Section 800.11(a)-(c). Sections 800.11(d)-(h) remain largely unchanged from the current 800.8(a)-(d) except that a new documentation requirement has been added for a finding of no historic properties present or affected.

In order to comply with the 1992 amendments which mandated participation of Indian tribes and Native Hawaiian organizations, the Council added a new section in 800.12 on involving Indian tribes and Native Hawaiians in the consultation process. This section sets forth specific requirements for involvement at each step of the Section 106 process and is designed to facilitate participation and agency planning for involvement.

Section 800.13 changes the Council's current emergency procedures contained in 800.12 by encouraging agencies to develop internal procedures, in consultation with the Council and the SHPO, which address how historic properties will be considered during emergencies. If an agency has not developed such procedures, the regulations encourage agencies to develop programmatic agreements that include provisions for dealing with historic properties during emergencies. If there is no applicable programmatic agreement, then the agency shall give the Council seven days to comment prior to the undertaking where the agency determines circumstances permit.

Section 800.14 is similar to the current Section 800.11 which addresses post review discoveries except that it adds the requirement that agencies must make reasonable efforts to avoid or minimize adverse effects on unplanned-for discoveries.

Subpart C—Program Alternatives

This Subpart provides new options for agencies to pursue in streamlining their Section 106 compliance activities and incorporates the current practice of developing Programmatic Agreements to facilitate coordination between Section 106 and an agency's particular program.

Section 800.15 provides five alternative methods of fulfilling Section 106 responsibilities, instead of following the procedures set forth in Subpart B. First, Section 800.15(a) states that Federal agencies may develop procedures and, when they are determined to be consistent with the Council's regulations, substitute them for comparable portions of the Council's regulations. Second, Section 800.15(b) provides for the development of Programmatic Agreements to govern particular agency programs or complex or multiple undertakings; this section is substantively unchanged from the current programmatic agreement section in 800.13 of the Council's regulations, but does change minor standards and requirements in the development of such agreements. Third, Section 800.15(c) allows for agencies to establish exempted categories for undertakings that have foreseeable effects which are not likely to be adverse. Fourth, Section 800.15(d) allows the Council to offer a streamlined method of treating a category of historic properties or a category of effects by allowing for standard treatments. Finally, Section 800.15(e) provides an efficient mechanism for fulfilling the requirement of seeking Council comment. This section allows agencies to request Council comment on a category of routine or repetitive undertakings instead of conducting individual reviews.

The Council has reserved Section 800.16 to address state, tribal and local program alternatives, but has deleted the current Section 800.7 on state agreements.

Section 800.17 contains definitions. Several definitions have been changed or deleted. ''Agency official'' has been deleted as redundant in light of Section 800.2(a)(1). ''Approval of the expenditure of funds'' has been added to clarify the triggering event for many Section 106 reviews. ''Area of potential effects'' has been changed in light of the removal of the ''effect'' determination step in the process and is now limited to the area where adverse effects may occur. ''Comment'' and ''consultation'' and ''effect'' have been added for clarification. ''Head of the agency'' has been added as a result of the 1992 amendments. ''Historic properties'' definition has been changed to include properties of traditional religious and cultural importance to Indian tribes or Native Hawaiian organizations that meet the National Register criteria. ''Indian lands'' has been changed to ''tribal lands'' and redefined as in the statute. ''Indian tribe'' is changed and tracks the exact language in the statute. ''Interested person'' has been deleted because that term is no longer used by the regulations. ''Memorandum of Agreement'' has been added for clarification. ''Native Hawaiian organization'' is added and tracks the statutory language. ''Programmatic Agreement'' has been added for clarification. ''Traditional cultural authority'' has been added because the 1992 amendments refer to the involvement of such groups. ''Tribal Preservation Officer'' has been added because the 1992 amendments provide a new role for such an officer. ''Undertaking'' has been defined exactly as in the statute.

III. Issues Deserving Special Attention From Commenters

1. Public Participation

The goal of the regulatory requirement that Federal agencies inform and involve the public in the Section 106 process is to ensure that the public has a reasonable opportunity to provide its views on a project. The Council has attempted to give the public an adequate chance to voice its concerns to Federal decision makers while recognizing legitimate concerns about avoiding

unnecessary procedural burdens and delays and protecting the privacy of non-governmental parties involved in the Section 106 process. How can the regulations be enhanced to provide for meaningful public involvement in a timely and effective fashion?

2. Local Governments

Several agencies seek an enhanced role for certified local governments in the Section 106 process and find that the regulations do not go far enough in providing for their involvement. The definition of ''Head of the agency'' provides that the head of a local government shall be considered the head of the agency where it has been delegated responsibility for Section 106 compliance. How can we better incorporate local governments into the process without confusing the regulations?

3. Council Involvement

In this proposal, the Council has removed itself from review of no adverse effect determinations and routine Memoranda of Agreement with the intent of deferring to agency-SHPO decision making as a general rule. At the same time, as the Federal agency assigned to review the policies and programs of Federal agencies on historic preservation matters, the Council has retained the right to enter the consultative process on its own motion or when asked requested by the Agency Official. The regulations set forth in 800.6 several criteria which indicate when an Agency Official must invite the Council to become involved in the consultation. They also set a general standard for when the Council will enter the process without a request. The Council intends on exercising its right to enter the process sparingly. Are the criteria set forth in 800.6(a)(1)(i) workable? Can the regulations better define when the Council will intervene on its own initiative?

4. Council Review of Agency Findings

Section 800.9 provides for Council review of agency findings where the Council has not participated in the consultative process pursuant to 800.6. The Council's right to review agency findings is limited to whether the agency followed the appropriate procedures when making an eligibility determination under 800.4(c)(2), a no historic properties present or affected finding under 800.4(d), or a no adverse effect finding or resolution by standard treatment under 800.5(c). The right to review is also limited by the requirement that the request be made prior to the agency approval of the expenditure of funds or the issuance of a license, permit or other approval. The Council has 10 days to decide if the request warrants Council review and 30 days to decide the merits of the case. The Council finds that the above review process strikes a balance between allowing review of procedurally deficient agency decisions and limiting review to situations that could not have been corrected earlier in the process. Some Federal agencies find that the review process in 800.9 provides the Council too much authority to second guess agency decisions and promotes a lack of finality to the process. How can the regulations accommodate the Council's concerns and those of other Federal agencies?

5. Time Frames

Throughout the regulations, time frames are set for reviews conducted by SHPOs and the Council. Generally, they allow thirty days for responding to agency requests, although some are shorter. These have been established in an effort to balance the need for an expeditious process for Federal agencies and applicants with the recognition of the need for adequate time to evaluate submissions (as well as the limits on resources available in SHPO offices and at the Council to respond within the specified time). Do the time frames achieve this balance or should specific ones be increased or decreased?

6. Alternate Procedures

The proposed regulations allow Federal agencies to substitute their own procedures for those contained in subpart B. Section 110(a)(2)(E) of the Act requires that procedures implementing Section 106, including these substitute procedures, be consistent with the Council's regulations. The proposed regulations charge the Secretary with making final determinations on consistency. This is based on the Secretary's primary responsibility for implementing Section 110. Alternatively, the Council, as the agency charged by Section 211 of the Act with issuing the regulations to guide implementation of Section 106, could make such a determination. A third option is allowing the Federal agency itself to make a determination of consistency. Is the proposed approach the best solution?

IV. Impact Analysis

Regulatory Flexibility Act

The proposed rules will not have a significant economic impact on a substantial number of small entities. The Council's regulations, in their current and revised form, only impose mandatory obligations on Federal agencies. If a Federal agency is legally authorized and chooses to delegate its responsibility to local governments, then that Federal agency must determine whether or not its delegation will have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act

The proposed regulations do not impose reporting requirements or the collection of information as defined in the Paperwork Reduction Act.

National Environmental Policy Act

Pursuant to 36 CFR Part 805, the Council is developing a draft Environmental Assessment and will complete the NEPA evaluation prior to publication of its final rule.

Executive Orders 12866 and 12875

The Council is exempt from compliance with Executive Orders 12866 pursuant to a memorandum issued by the Office of Management and Budget's Office of Information and Regulatory Affairs on October 12, 1993. The Council is also exempt from the documentation requirements of Executive Order 12875 pursuant to a memorandum issued by the same office on January 11, 1994. Although the Council is exempt, it has adhered to the principles in both orders by involving State, local and tribal entities, members of the public, and industry groups in the development of the proposed regulations as discussed above in the Background section of this preamble. The proposed regulations, like the current regulations, do not mandate State, local and tribal governments to participate in the Section 106 process. The State, local and tribal governments have the option of declining to participate, although the State Historic Preservation Officers are required to advise and assist Federal agencies, as appropriate, as part of their duties under Section 101(b)(3)(E) of the National Historic Preservation Act and as a condition of their Federal grant assistance. In accordance with Executive Order 12875, the proposed regulations provide flexible approaches to consideration of historic properties in Federal agency decision making by allowing for categorical exemptions, standard treatments, program comments, and programmatic agreements in Section 800.15 of the proposed regulations.

Unfunded Mandates Reform Act of 1995

The Council has determined that its regulations do not fall within the definition of a Federal mandate as defined in Section 421(6) of the Unfunded Mandates Reform Act of 1995.

Executive Order 12898

The regulations implementing Section 106 do not pose environmental risks, but rather, seek to avoid adverse effects on historic properties in all areas of the United States.

Memorandum Concerning Government-to-Government Relations with Native American Tribal Governments

The Council has fully complied with this Memorandum. A Native American representative served on the Council and was a member of the Council's Regulations Task Force. The proposed regulations enhance the opportunity for Native American involvement in the Section 106 process and clarify the obligation of Federal agencies to consult with Native Americans.

List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Inter-governmental relations.

Dated: September 10, 1996.

Robert D. Bush,

Executive Director.

Title 36, chapter VIII is amended by revising part 800 to read as follows:

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Subpart A—Purposes and Participants

Subpart B—Section 106 Procedures

Subpart C—Program Alternatives

Subpart A—Purposes and Participants

§ 800.1 Purposes.

(a) Purposes of the Section 106 process. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The Section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation between the Agency Official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to avoid or minimize adverse effects on historic properties.

(b) Relation to other provisions of the Act. Section 106 is one of several provisions of the Act designed to further the national policy of historic preservation. References to those related provisions are included in the procedures in this part to identify circumstances where actions under the procedures in this part may be affected by the independent obligations of those other provisions. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in the procedures in this part for ease of access and are not incorporated by reference.

(c) Methods of complying with section 106 of the Act. The procedures in this part provide several methods for Federal agencies to meet their Section 106 responsibilities.

(1) Alternate procedures. Section 110(a)(2)(E) of the Act directs Federal agencies to develop procedures for implementing section 106 of the Act that are consistent with the Council's regulations and meet standards specified in the Act. The Council encourages Federal agencies to adopt such procedures and, where appropriate, substitute them for the procedures in subpart B of this part in accordance with § 800.15(a).

(2) Exemptions and programmatic agreements. If a Federal agency does not have alternate procedures in place, it should consider the use of exemptions (§ 800.15(c)) and programmatic agreements (§ 800.15(b)) to tailor Section 106 compliance to its program needs.

(3) General procedure. If a Federal agency has not adopted alternate procedures and the undertaking is not exempted or governed by a programmatic agreement, the Agency Official shall comply with the process set forth in subpart B of this part.

(d) Timing. Section 106 of the Act requires the Agency Official to complete the section 106 process prior to the approval of the expenditure of funds or prior to the issuance of any license, permit or other approval. An Agency Official may expend funds on, or authorize, nondestructive project planning activities, including field investigations, before completing compliance with section 106 of the Act, and may conduct phased compliance with the procedures in subpart B of this part at different stages of planning, provided that such actions do not restrict the subsequent consideration of alternatives to avoid or minimize the undertaking's adverse effects on historic properties. The Agency Official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered.

§ 800.2 Participants in the section 106 process.

(a) Principal parties. The following parties have statutory responsibilities in the section 106 process:

(1) Agency Official. It is the legal obligation of the Federal agency to fulfill the requirements of section 106 of this Act and to ensure that an Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The Agency Official has final approval authority for the undertaking and may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 of the Act in accordance with law or agency procedures established under section 110(a)(2)(E) of the Act.

(i) Section 112 of the Act requires each Federal agency to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under applicable regulations of the Secretary and that agency personnel and contractors responsible for historic resources meet applicable qualification standards

established by the Office of Personnel Management.

(ii) If more than one Federal agency is involved in an undertaking, the agencies may designate a lead Federal agency. The lead Federal agency shall identify the appropriate official to serve as the Agency Official. Such Agency Official shall act on behalf of all participating Federal agencies, fulfilling their collective responsibilities under section 106 of the Act and subpart B of this subpart.

(2) Council. The Council is responsible for issuing regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to Agency Officials on undertakings that affect historic properties and assists participants in meeting their legal obligations. Participants in the section 106 process may seek advice and guidance from the Council on the application of this part to specific undertakings even though the Council is not formally involved in the review of the undertaking.

(b) Consulting parties. The following parties have consultative roles in the section 106 process as defined in the Act.

(1) State Historic Preservation Officer. The State Historic Preservation Officer advises and assists Federal agencies in carrying out their historic preservation responsibilities and consults with Federal agencies on undertakings that affect historic properties and on the content and sufficiency of plans to protect, manage or mitigate harm to historic properties. If an Indian tribe has assumed the functions of the State Historic Preservation Officer for the section 106 process on tribal lands, the State Historic Preservation Officer shall participate in accordance with any plan referenced in § 800.2(b)(2) and may also participate as a member of the interested public. The role of the State Historic Preservation Officer with regard to effects on historic properties located off tribal lands is unchanged.

(2) Indian tribes and Native Hawaiian organizations. The Agency Official is required to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. To meet this responsibility, the Agency Official shall identify Indian tribes and Native Hawaiian organizations likely to have such interests in accordance with § 800.3(e) and consult with them in accordance with § 800.12 to ensure that their views are fully considered by the Agency Official in reaching findings and decisions in the section 106 process. An Indian tribe may assume the functions of a State Historic Preservation Officer in the section 106 process with respect to tribal lands under section 101(d)(2) of the Act. If so, the Agency Official shall consult with the Tribal Preservation Officer in accordance with the plan prepared pursuant to that section regarding the effects of undertakings on tribal lands.

(c) Affected parties. The following parties have direct legal or financial interests in the effects of an undertaking on historic properties and may participate in the section 106 process as consulting parties when they so request.

(1) Representatives of local governments. If a representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur so requests, the Agency Official shall involve the local government as a consulting party. Under certain authorities, the local government may be authorized to act as the Agency Official for purposes of section 106 of the Act.

(2) Applicants for Federal assistance, permits, licenses and other approvals. If an applicant for Federal assistance or permission so requests, the Agency Official shall involve the applicant as a consulting party. The Agency Official may authorize an applicant to initiate consultation with the State Historic Preservation Officer and others under §§ 800.3 and 800.4, but remains legally responsible for all findings charged to the Agency Official. Where not inconsistent with the rights of the public to access the information that is the basis for the Agency Official's decisions under the procedures in this part, the Agency Official may take reasonable steps to protect the privacy of non-governmental applicants in accordance with applicable agency procedures.

(d) The public. The views of the public are essential to informed Federal decisionmaking as to taking into account effects of undertakings. The Act directs Federal agencies to consult with the interested public, as appropriate, in steps taken to comply with section 106 of the Act. The procedures in this part provide for notification and involvement of the public in the section 106 process and for the identification of and consultation with the interested public as appropriate.

(1) Responsibilities. The Agency Official is required at specific points in the section 106 process to provide the public with information about an undertaking and its effects on historic properties and to seek public comment and input. Members of the public may also provide views on their own initiative and the Agency Official should consider those views in decisionmaking.

(2) Flexible application. The Agency Official's efforts to seek and consider the views of the public should reflect the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, and the nature of the Federal involvement in the undertaking. Evaluation of these factors for an individual undertaking may warrant the Agency Official to apply the specific public involvement requirements of subpart B of this part in a flexible manner.

(3) Use of agency procedures. The Agency Official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements, if they provide adequate opportunities for public involvement consistent with the procedures in subpart B of this part.

(4) Interested public. The interested public includes those individuals and organizations that have indicated to the Agency Official an interest in the effects of an undertaking on historic properties. Certain individuals and organizations may warrant direct involvement in the consultations conducted by the Agency Official due to the nature of their legal or economic relation to the undertaking or affected properties, or due to their representation of citizens or organizations concerned with the undertaking and its effects on historic properties. The Agency Official is required to take steps to identify the interested public and involve them at specific points in the section 106 process. The interested public includes:

(i) Owners of real property affected directly by the undertaking, provided that the Agency Official may limit participation to organizations representing such owners if necessary;

(ii) Traditional cultural authorities with an interest in the undertaking's effects on historic properties of traditional cultural and religious importance;

(iii) The State Historic Preservation Officer when an Indian tribe has assumed the functions of the State Historic Preservation Officer under section 101(d)(2) of the Act; and

(iv) Other individuals, organizations or entities that request to be treated as members of the interested public.

Subpart B—Section 106 Procedures

§ 800.3 Initiation of the Section 106 process.

(a) Establish undertaking. The Agency Official shall determine whether the proposed Federal action is an undertaking and, if so, whether it has the potential to affect historic properties and whether review is governed by a Federal agency program alternative established under § 800.15.

(1) If the action is not an undertaking or an undertaking that has no potential to affect historic properties, the Agency Official has no further obligations under section 106 of the Act.

(2) If the review of the undertaking is governed by a Federal agency program alternative, the Agency Official shall follow that alternative.

(b) Coordinate with other reviews. The Agency Official shall coordinate the steps of the Section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency specific legislation, such as section 303(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the Agency Official may use information developed for other reviews under Federal or State law to meet the requirements of the section 106 process.

(c) Plan to involve the public. The Agency Official shall begin planning for involving the public in the Section 106 process, relating the steps to be taken to the likely level and nature of public interest in the undertaking and its effects on historic properties. The Agency Official shall consider what individuals and organizations may have an interest in the undertaking and its effects on historic properties and plan to involve them in the Section 106 process as members of the interested public. The Agency Official should give special attention to identifying those members of the interested public who should be consulted as the section 106 process proceeds and involve them as appropriate.

(d) Initiate consultation with the State Historic Preservation Officer. The Agency Official shall determine the appropriate State Historic Preservation Officer or Officers to be involved in the section 106 process and initiate consultation.

(1) If the State Historic Preservation Officer declines in writing to participate in the Section 106 process or fails to respond in a timely manner at any point in these procedures, the Agency Official shall consult with the Council to complete the Section 106 process without the State Historic Preservation Officer.

(2) If more than one State is involved in an undertaking, the involved State Historic Preservation Officers may designate a lead State Historic Preservation Officer to act on behalf of all participating State Historic Preservation Officers in the Section 106 process.

(3) Requirements for consultation with the State Historic Preservation Officer should be implemented in a manner appropriate to the agency planning process for the undertaking and the nature and effect of the undertaking on historic properties. A single consultation by the Agency Official with the State Historic Preservation Officer may address multiple steps in the Section 106 process where it is consistent with the purposes of the procedures in this part.

(e) Identify consulting parties. The Agency Official shall determine whether there are any local governments or applicants that are entitled to be involved in consultations conducted under this subpart and plan to involve them as appropriate. The Agency Official shall identify the Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and plan for their participation in accordance with § 800.12 .

§ 800.4 Identification of historic properties.

(a) Determine scope of identification efforts. At the earliest feasible stage in planning an undertaking and coordinated with any steps being taken to meet the requirements of the National Environmental Policy Act, the Agency Official shall consult with the State Historic Preservation Officer and:

(1) Determine the area of potential effects;

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified; and

(3) Seek information from individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area and identify issues relating to historic properties.

(b) Identify historic properties. Based on the information gathered under § 800.4(a) and in consultation with the State Historic Preservation Officer, the Agency Official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) Level of effort. The Agency Official, in consultation with the State Historic Preservation Officer, shall make a reasonable and good faith effort to carry out appropriate identification efforts. The Agency Official shall determine the appropriate scope and type of identification efforts, including background research, consultation, sample field investigation, and field survey, taking into account past planning or research studies and results, and based on the magnitude of the undertaking, the nature and extent of its potential effects on historic properties and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject.

(2) Phased identification. Where alternative locations are under consideration or access to properties is restricted, the Agency Official may conduct identification efforts designed to establish the likely presence of historic properties within the area of potential effects for each alternative through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration and the magnitude of the undertaking and likely effects. As specific aspects or location of a preferred alternative are determined, the Agency Official shall complete the identification of historic properties in accordance with § 800.4(b)(1).

(3) Consistent with applicable conflict of interest laws, the Agency Official may use the services of applicants, consultants, or designees to prepare information and analyses under this subpart, but remains legally responsible for all findings charged to the Agency Official. If a document or study is prepared by a non-Federal party, the Agency Official shall evaluate the document prior to its approval and be responsible for its content.

(c) Evaluate historic significance. (1) Apply National Register Criteria. In consultation with the State Historic Preservation Officer, guided by the Secretary's Standards and Guidelines for Evaluation and with consideration for the potential of the proposed undertaking to affect identified properties, the Agency Official shall apply the National Register Criteria to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or

incomplete prior evaluations may require reevaluation of properties previously determined eligible or ineligible.

(2) Determine whether a property is eligible. If the Agency Official determines the criteria are met and the State Historic Preservation Officer agrees, the property shall be considered eligible for the National Register for Section 106 purposes. If the Agency Official determines the criteria are not met and the State Historic Preservation Officer agrees, the property shall be considered not eligible. If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63.

(d) Results of identification and evaluation. (1) No historic properties present or affected. If the Agency Official finds that there are no historic properties either present or that may be affected by the undertaking, the Agency Official shall provide documentation of this finding as set forth in § 800.11(d) to the State Historic Preservation Officer. The Agency Official shall notify any consulting party and the interested public and make the documentation available for public inspection prior to approving the undertaking. If the State Historic Preservation Officer does not object within 15 days of receipt of an adequately documented finding, this completes the Agency Official's responsibilities under section 106 of the Act.

(2) Historic properties affected. If there are historic properties that may be affected by the undertaking, the Agency Official shall notify any consulting party and the interested public and assess adverse effects in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) Apply criteria of adverse effect. In consultation with the State Historic Preservation Officer, the Agency Official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The Agency Official shall consider any views concerning such effects provided by consulting parties, the interested public and the public at large.

(1) Criteria of adverse effect. An undertaking is considered to have an adverse effect when it may alter the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that are later in time or farther removed in distance.

(2) Examples of adverse effects. Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction, damage, or alteration of all or part of the property;

(ii) Removal of the property from its historic location;

(iii) Alteration of the character of the property's setting or use when that character contributes to the property's qualification for the National Register;

(iv) Introduction of visual or audible elements that are out of character with the property ;

(v) Neglect of a property which causes its deterioration; and

(vi) Transfer, lease, or sale of property out of Federal ownership or control.

(3) Avoidance of adverse effects. The Agency Official, in consultation with the State Historic Preservation Officer, may make a finding of no adverse effect when the Agency Official modifies the undertaking to avoid adverse effects.

(4) Standard treatment of potential adverse effects. The Agency Official may find, in consultation with the State Historic Preservation Officer, that certain adverse effects are satisfactorily resolved in accordance with one of the following standard treatments:

(i) The undertaking is limited to maintenance, repair, rehabilitation, or restoration of buildings or structures, including hazardous materials remediation or modifications for handicapped access, and will be conducted in accordance with construction plans and specifications that meet the Secretary's Standards for the Treatment of Historic Properties and applicable guidelines and that are reviewed by the State Historic Preservation Officer prior to implementation;

(ii) The undertaking is limited to construction or ground disturbance that would destroy, damage or alter an archaeological property of value only for its contribution to knowledge of the past, and a plan for studying the property with archeological methods, collecting important information, and disseminating the results to the public, or a plan for preserving the property for future study is prepared and implemented in accordance with applicable professional standards and guidelines;

(iii) The undertaking is limited to the transfer, sale or lease of a Federal historic property and adequate and legally enforceable restrictions or conditions are included to ensure preservation of the property's significant historic features;

(iv) The undertaking is limited to the rehabilitation or replacement of a bridge and, in accordance with a State inventory and plan for historic bridges approved by the State Historic Preservation Officer, specific measures are provided for recordation and marketing, relocation or reuse of the bridge; or

(v) The undertaking meets another standard treatment specified by the Council under § 800.15(d).

(b) State Historic Preservation Officer review. If the Agency Official makes either a finding of no adverse effect or that adverse effects can be satisfactorily resolved by a standard treatment, the Agency Official shall submit the finding with the documentation specified in § 800.11(e) to the State Historic Preservation Officer for a 30-day review period.

(1) Agreement with finding. If the State Historic Preservation Officer agrees with the Agency Official's finding, the Agency Official may proceed and shall carry out the undertaking in accordance with § 800.5(c)(1).

(2) Disagreement with finding. If the State Historic Preservation Officer disagrees within 30 days of receipt of the finding, the Agency Official shall consider the effect adverse. The State Historic Preservation Officer shall specify the reasons for disagreeing with the finding. The Agency Official may request the Council to review the disagreement and shall proceed in accordance with the Council's opinion as to whether the effect is adverse.

(c) Results of assessment. (1) Finding of no adverse effect or resolution by standard treatment. The Agency Official shall maintain a record of the finding, notify any participating local government or applicant and the interested public, and make the record available for public review before approving the undertaking. Implementation of the undertaking in accordance with the finding as documented completes the Agency Official responsibilities under Section 106 of the Act. If the Agency Official fails to carry out the undertaking in accordance with the finding, the Agency Official shall follow § 800.6.

(2) Adverse effect found. If an adverse effect is found and not resolved by a standard resolution in accordance with this section, the Agency Official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) Continue consultation. The Agency Official shall consult with the State Historic Preservation Officer to develop and evaluate alternatives or modifications to the undertaking to avoid or minimize adverse effects on historic properties.

(1) Determine Council involvement. The Agency Official shall determine whether to request Council involvement in the consultation and notify the Council by providing the documentation specified in § 800.11(f).

(i) The Agency Official shall request the Council to become involved in the consultation in accordance with § 800.6(b)(2):

(A) When the Agency Official determines that Council involvement will facilitate resolution of adverse effects;

(B) When the undertaking has an adverse effect upon a National Historic Landmark or is to be carried out on tribal lands;

(C) When a Programmatic Agreement under § 800.15(b) is prepared; or

(D) When the State Historic Preservation Officer, an Indian Tribe, a Native Hawaiian organization, a local government or an applicant requests Council involvement.

(ii) The Council shall advise the Agency Official of its decision to participate within 15 days of receipt of notice. The Council may enter the consultation on its own initiative when it determines that Council involvement is necessary to ensure that the purposes of section 106 and the Act are met.

(iii) If the criteria in § 800.6(a)(1)(i) are not met or the Council does not elect to join the consultation, the Agency Official may complete consultation in accordance with § 800.6(b)(1).

(2) Involve consulting parties and the interested public. The Agency Official shall involve consulting parties in the consultation as determined under § 800.3. When agreed to by the Agency Official, the State Historic Preservation Officer and the Council, if participating, members of the interested public may become consulting parties. If the Agency Official and the State Historic Preservation Officer do not agree, the Agency Official shall request the Council to decide. The Agency Official shall involve any member of the interested public that will assume a specific role or responsibility in a Memorandum of Agreement.

(3) Provide documentation. The Agency Official shall make available to the State Historic Preservation Officer and other consulting parties the documentation specified in § 800.11(f) and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) Involve the public. The Agency Official shall make available information to the public and provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The Agency Official shall use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, to ensure that the full range of the public's views is represented in the consultation.

(b) Resolve adverse effects. (1) Resolution without the Council. (i) The Agency Official shall consult with the State Historic Preservation Officer and other consulting parties to seek ways to avoid or minimize the adverse effects.

(ii) If during the consultation the Council decides to join the consultation, the Agency Official shall continue the consultation in accordance with § 800.6(b)(2).

(iii) If the Agency Official and the State Historic Preservation Officer agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement. The Agency Official shall file a copy of the executed Memorandum of Agreement with the Council prior to approving the undertaking.

(iv) If the Agency Official and the State Historic Preservation Officer fail to agree on the terms of a Memorandum of Agreement, the Agency Official shall request the Council to join the consultation and proceed in accordance with § 800.6(b)(2).

(2) Resolution with Council participation. If the Council decides to participate, the Agency Official shall consult with the State Historic Preservation Officer, the Council, and other consulting parties to avoid or minimize the adverse effects. If the Agency Official, the State Historic Preservation Officer, and the Council agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement.

(c) Memorandum of Agreement. (1) Signatories. The Agency Official and the State Historic Preservation Officer are the signatories to a Memorandum of Agreement executed pursuant to § 800.6(b)(1). The Agency Official, the State Historic Preservation Officer, and the Council are the signatories to a Memorandum of Agreement executed pursuant to § 800.6(b)(2). The signatories have sole authority to execute, amend or terminate the agreement.

(2) Concurrence by others. The signatories may agree to invite others to concur in the Memorandum of Agreement. The Agency Official shall invite any consulting parties to concur.

(3) Reports on implementation. Where the signatories agree it is appropriate, a Memorandum of Agreement shall include a provision for monitoring and reporting on its implementation.

(4) Duration. A Memorandum of Agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(5) Legal status. A Memorandum of Agreement executed pursuant to this section evidences the Agency Official's compliance with Section 106 and this part and shall govern the undertaking and all of its parts. The Agency Official shall ensure that the undertaking is carried out in accordance with the Memorandum of Agreement.

(6) Amendments. The signatories to a Memorandum of Agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the Agency Official shall file it with the Council. Failure to agree on amendments leaves the existing agreement in effect.

(7) Termination. If any signatory determines that the terms of a Memorandum of Agreement cannot be carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, the Agency Official, the State Historic Preservation Officer, or the Council if a signatory, may terminate it and the Agency Official shall request the comments of the Council under § 800.7(b).

§ 800.7 Failure to resolve adverse effects.

(a) Termination of consultation. After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the Agency Official, the State Historic Preservation Officer, or the Council may determine that further consultation will not be productive and terminate consultation.

(1) If the Agency Official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request the Council's comments, accompanied by the documentation in § 800.11(h), and notify the State Historic Preservation Officer, other consulting parties and the interested public of the request.

(2) If the State Historic Preservation Officer terminates consultation, the Agency Official and the Council may execute a Memorandum of Agreement without the State Historic Preservation Officer's involvement or either may terminate consultation.

(3) If the Council terminates consultation, the Council shall notify the Agency Official, the State Historic Preservation Officer, other consulting parties, and the interested public of the termination and comment under § 800.7(b).

(b) Comments by the Council. (1) Preparation. The Council shall prepare its comments with an adequate opportunity for the Agency Official, the State Historic Preservation Officer, other consulting parties, and the public to provide their views. Upon request of the Council, the Agency Official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) Timing. The Council shall transmit its comments within 45 days of receipt of a request under § 800.7(a)(1) or termination by the Council under § 800.7(a)(3), unless otherwise agreed to by the Agency Official.

(3) Transmittal. The Council shall provide its comments to the head of the agency requesting comment with copies to the Agency Official, the State Historic Preservation Officer, other consulting parties, the interested public, and others as appropriate.

(4) Response to Council comment. The head of the agency shall consider the Council's comments in reaching a final decision on the undertaking. The head of the agency may not delegate his or her responsibilities pursuant to this paragraph. The head of the agency shall document the decision by:

(i) Preparing a record of the decision and the rationale for the decision, evidencing consideration of the Council's comments and providing it to the Council prior to approving the undertaking;

(ii) Providing a copy of the record of decision to the State Historic Preservation Officer, other consulting parties, and the interested public; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination with the National Environmental Policy Act.

(a) General coordination. Federal agencies are encouraged to coordinate compliance with section 106 of the Act and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (42 U.S.C. 4231 *et seq.*)(NEPA).

(b) Actions categorically excluded under NEPA. If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the Agency Official shall determine if it qualifies as an undertaking requiring review under section 106 of the Act pursuant to § 800.3(a). If so, the Agency Official shall comply with the procedures in this subpart.

(c) Use of the NEPA process for section 106 of the Act purposes. An Agency Official may use the process and documentation for the preparation of an Environmental Impact Statement or an Environmental Assessment (EA) to comply with section 106 of the Act in lieu of the procedures set forth in §§ 800.3 through 800.6 if the following conditions are met.

(1) Preparation of the Draft Environmental Impact Statement (DEIS) or EA meets the following standards:

(i) The Agency Official has notified the Council, the State Historic Preservation Officer and the interested public during the preparation of the DEIS or EA that this section is being used to comply with section 106 of the Act;

(ii) Historic properties are identified and effects of the undertaking are evaluated in a manner consistent with the criteria and procedures of §§ 800.3 through 800.5 and the documentation standards of § 800.11;

(iii) The Agency Official has consulted with the State Historic Preservation Officer, other consulting parties, and the Council where appropriate as required by §§ 800.3 through 800.6 and § 800.12 when identifying historic properties, evaluating potential adverse effects, and considering measures to avoid or minimize adverse effects;

(iv) The Agency Official has involved the interested public and the public in accordance with the agency's NEPA procedures; and

(v) Alternatives and measures that would avoid or minimize any adverse effects of the undertaking on historic properties are described in the DEIS or EA.

(2) The Agency Official shall submit the DEIS or EA to the Council, the State Historic Preservation Officer, other consulting parties, and the interested public when circulating it for public comment. The Agency Official shall indicate that the DEIS or EA is intended to meet the requirements of section 106 of the Act under this section.

(3) If within the time allowed for public comment on the DEIS or EA the Council objects to how the Agency Official has taken into account the effects of the undertaking on historic properties, the Agency Official shall comply with § 800.6(b)(2). If the Agency Official receives an objection from the State Historic Preservation Officer, a consulting party, or a member of the interested public within the time allowed for public comment on the document, the Agency Official shall provide the objection to the Council. Within 30 days, the Council shall notify the Agency Official either that it agrees with the objection, in which case the Agency Official shall comply with § 800.6(b)(2), or that it disagrees with the objection, in which case the Agency Official shall continue to follow this section.

(4) The Agency Official shall incorporate into the Final Environmental Impact Statement (FEIS) or final document resulting from the EA measures to avoid or minimize adverse effects on historic properties. Adoption of the proposed measures through a commitment, binding on the agency or the applicant for Federal assistance or permission, as appropriate, to carry them out and embodied in a Record of Decision (ROD) following or accompanying the FEIS or final document resulting from the EA satisfies the Agency Official's responsibilities under section 106 of the Act and the procedures in this part.

(5) If the undertaking is subsequently modified in a manner that alters the treatment of effects on historic properties or if the Agency Official fails to carry out the measures to avoid or minimize adverse effects as specified in the ROD, the Agency Official shall notify the State Historic Preservation Officer, any other consulting party, and the interested public and consult with the Council. The Council may either require the Agency Official to follow § 800.6 or provide comments to the Agency Official within 30 days of the request for consultation.

§ 800.9 Council review of section 106 of the Act compliance.

(a) Assessment of Agency Official findings for individual undertakings. (1) Basis for request. If the Council has not participated in the review of an undertaking under the procedures in this subpart, a State Historic Preservation Officer, a consulting party or a member of the interested public that has participated in the section 106 of the Act process may request the Council to assess whether an Agency Official has complied with the procedures in this subpart when making a determination whether a property is eligible for the National Register under § 800.4(c)(2), a finding that there are no historic properties present or affected under § 800.4(d), or a finding of no adverse effect or resolution by standard treatment under § 800.5(c). The request shall be in writing, state specific reasons

why the finding is not consistent with the provisions of the procedures in this subpart and include such documentation as the requestor may have available to support the request.

(2) Timing. The request must be made prior to the approval of the expenditure of funds or the issuance of any license, permit or other approval by the Agency Official.

(3) Council review of the finding. (i) The Council shall decide within 10 days of receipt of the request whether it states reasons that, if true, would warrant the Council determining that the finding was inconsistent with the procedures in this subpart.

(ii) If the Council decides that the request states reasons which would warrant the Council determining that the finding was inconsistent with the procedures in this subpart, the Council shall review the finding on its merits. The Council shall notify the Agency Official, provide a copy of the request and any accompanying supporting documentation and invite the views of the Agency Official on the merits of the request. The Council shall complete its assessment of the finding within 30 days of notifying the Agency Official and may request the Agency Official to refrain from taking final action on the undertaking during that period. The Council shall provide its views to the requestor, the Agency Official, the State Historic Preservation Officer, consulting parties and other members of the interested public, as appropriate.

(iii) If the Council decides that the request does not state reasons that would warrant the Council determining that the finding was inconsistent with these procedures, the Council shall decline to assess the finding and notify the requestor.

(4) Questions of eligibility. When the finding concerns the eligibility of a property for the National Register, the Council shall refer the matter to the Secretary.

(b) Agency foreclosure of the Council's opportunity to comment. Where an Agency Official has failed to complete the requirements of section 106 of the Act in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the Agency Official and allow 30 days for the Agency Official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Chairman of the Council shall transmit the determination to the head of the agency.

(c) Intentional adverse effects by applicants. (1) Agency responsibility. Section 110(k) of the Act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the Act, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to Section 110 of the Act governs its implementation.

(2) Compliance with section 106 of the Act. If an Agency Official, after consulting with the Council, determines to grant the assistance, the Agency Official shall comply with the procedures in this subpart to take into account the effects of the undertaking on any other historic properties.

(d) Evaluation of Section 106 operations. The Council shall evaluate the operation of the Section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the Act.

(1) Information from participants. Section 203 of the Act authorizes the Council to obtain information from Federal agencies necessary to conduct oversight and evaluation of the Section 106 process. The Agency Official shall maintain documentation of actions taken to comply with section 106 of the Act that meet the standards of § 800.11 and applicable agency procedures. The Agency Official shall make such documentation available to the Council upon request. The Council may request available information and documentation from other participants in the Section 106 process.

(2) Peer review. The Council may use professional peer review to assist in any evaluation.

(3) Improving the operation of section 106 of the Act. Based upon any evaluation of the Section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an Agency Official, a State Historic Preservation Officer or a Tribal Preservation Officer who has assumed the role of the State Historic Preservation Officer has failed to properly carry out the responsibilities assigned under the procedures in this part, the Council may participate in individual case reviews in a manner and for a period that it determines is necessary to improve performance or correct deficiencies.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) Agency official's responsibilities. Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks in accordance with this section.

(b) Resolution of adverse effects. Any consultation to resolve adverse effects conducted under § 800.6 shall include the Council, if the Council chooses to participate.

(c) Involvement of the Secretary. The Agency Official shall notify the Secretary of consultations involving National Historic Landmarks and invite the Secretary to participate in the consultation. The Council may request a report from the Secretary under Section 213 of the Act to assist in the consultation.

(d) Report of outcome. The Council shall report the outcome of the Section 106 process, including its comments or any Memoranda of Agreement, to the Secretary and the head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) Adequacy of documentation. The Agency Official shall ensure that any determination, finding or agreement under the procedures in this subpart is supported by sufficient documentation to enable reviewing parties to understand its factual and logical basis. If the Council, or the State Historic Preservation Officer in those situations where the Council is not involved, determines the applicable documentation standards are not met, the time period specified in the relevant section of this subpart shall be suspended until adequate documentation is submitted.

(b) Format. The Agency Official may use documentation prepared to meet the needs of other authorities to fulfill the requirements of the procedures in this subpart, provided that resulting

documentation meets the standards of this section.

(c) Confidentiality. Section 304 of the Act requires an Agency Official to withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy, risk harm to the historic resource, or impede the use of a traditional religious site by practitioners.

(d) Finding of no historic properties present or affected. Documentation shall include:

(1) A description of the undertaking and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the efforts used to identify historic properties; and

(3) The basis for determining that no historic properties are present or affected.

(e) Finding of no adverse effect or standard treatment of potential adverse effects. Documentation shall include:

(1) A description of the undertaking and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking, including appropriate information on the nature of their significance;

(3) A description of the efforts used to identify historic properties;

(4) A description of why the criteria of adverse effect were found inapplicable, or how potential adverse effects would be resolved; and

(5) Any views provided by consulting parties, the interested public and the public.

(f) Finding of adverse effect. Documentation shall include:

(1) A description of the undertaking and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the affected historic properties, with information on the characteristics that qualify them for the National Register; and

(3) A description of the undertaking's adverse effects on historic properties.

(g) Memorandum of Agreement. When a memorandum is filed with the Council , the documentation shall include an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties, the interested public and the public.

(h) Requests for comment when consultation is terminated. Documentation shall include that specified in paragraph (f) of this section and:

(1) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) The planning schedule for the undertaking; and

(4) Copies or summaries of any views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

§ 800.12 Consultation with Indian tribes and Native Hawaiian organizations.

(a) Objectives. Consultation shall be designed to:

(1) Provide the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification of historic properties, including associated traditional religious and cultural importance, and articulate its views on the undertaking's effects on such properties.

(2) Involve designated representatives of the Indian tribe's or Native Hawaiian organization's governing body and those traditional cultural authorities and other tribal or organizational members identified by the designated representatives.

(3) Commence early in the planning process, in order to identify relevant preservation issues and resolve concerns about the confidentiality of information on historic properties and to allow adequate time for discussion of relevant preservation issues. Upon request, the Agency Official, after consultation with the Secretary, shall withhold information about historic properties in accordance with section 304 of the Act.

(b) Undertakings on tribal lands. Consultation with Indian tribes on tribal lands requires special consideration, as set forth in this paragraph, of the sovereignty of Indian tribes over such lands. Where an Indian tribe has not assumed the responsibilities of the State Historic Preservation Officer under section 101(d)(2) of the Act, the Agency Official shall involve the Indian tribe with jurisdiction over the tribal lands as a consulting party in accordance with this subsection.

(1) Identification of historic properties. When carrying out the provisions of § 800.4, the Agency Official shall consult with the Indian tribe when determining the area of potential effects, locating historic properties and evaluating the historic significance of identified properties. The Indian tribe shall be consulted when reaching any determination of eligibility under § 800.4(c)(2) and its timely objection to an Agency Official's determination shall require the Agency Official to obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. The Agency Official shall provide documentation of any finding that there are no historic properties present or affected to the Indian tribe. If the Indian tribe objects within 15 days of receipt of an adequately documented finding, the Agency Official shall consider that historic properties are affected by the undertaking.

(2) Assessment of adverse effects. When carrying out the provisions of § 800.5, the Agency Official shall consult with the Indian tribe when applying the criteria of adverse effect to historic properties within the area of potential effects, making findings of avoidance of adverse effect and determining satisfactory resolution of adverse effects. The Agency Official shall provide a copy of any findings of no adverse effect or that adverse effects have been satisfactorily resolved by a standard treatment to the Indian tribe when submitting them to the State Historic Preservation Officer for review. If the Indian tribe objects to the finding within 30 days of receipt and specifies the reasons for disagreeing, the effect shall be considered adverse, provided that the Agency Official may request the Council to review the disagreement and proceed in accordance with the Council's opinion as to whether the effect is adverse.

(3) Resolution of adverse effects. When carrying out the responsibilities of § 800.6, the Agency Official shall consult with the Indian tribe along with the State Historic Preservation Officer when determining participants in the consultation and resolving adverse effects. The Indian tribe shall be a signatory to any agreement reached under § 800.6.

(4) Failure to resolve adverse effects. When an Agency Official follows the provisions of § 800.7, the Indian tribe shall have the same opportunities to terminate consultation and participate in the Council comment process as the State Historic Preservation Officer.

(c) Undertakings not on tribal lands. Where the Agency Official has identified an Indian tribe or Native Hawaiian organization that attaches religious or cultural significance to historic properties within the area of potential effects under § 800.3(e), including one that does not reside in the

vicinity of the undertaking, the Agency Official shall involve them in accordance with this paragraph.

(1) Identification of historic properties. When carrying out the provisions of § 800.4, the Agency Official shall consult with the Indian tribe or Native Hawaiian organization when determining the area of potential effects, locating historic properties that may possess religious or cultural significance and applying the National Register Criteria to such properties when identified.

(2) Assessment of adverse effects. When carrying out the provisions of § 800.5, the Agency Official shall consult with the Indian tribe or Native Hawaiian organization when applying the criteria of adverse effect to historic properties that may possess religious or cultural significance within the area of potential effects, making findings of avoidance of adverse effect to such properties and determining satisfactory treatment of adverse effects to such properties.

(3) Resolution of adverse effects. When carrying out the responsibilities of § 800.6, the Agency Official shall consult with the Indian tribe or Native Hawaiian organization when determining Council involvement and resolving adverse effects with or without the Council. The governing body of the Indian tribe or Native Hawaiian organization shall be invited to concur in any Memorandum of Agreement reached when it concerns properties that possess religious or cultural significance.

(4) Failure to resolve adverse effects. When the Agency Official follows the provisions of § 800.7, the Indian tribe or Native Hawaiian organization shall have the same opportunities to provide views and receive information in the Council comment process as the State Historic Preservation Officer.

(d) Emergency situations and post-review discoveries. (1) Tribal lands. When an agency complies with the provisions of § 800.13 or § 800.14 for an undertaking on tribal lands, the Indian tribe shall have the same opportunities to participate as the State Historic Preservation Officer. The Agency Official shall also coordinate requirements under § 800.13 or § 800.14 with any applicable actions taken to meet the requirements of the Native American Graves Protection and Repatriation Act.

(2) Non-tribal lands. Where the Agency Official has identified an Indian tribe or Native Hawaiian organization that attaches religious or cultural significance to historic properties within the area of potential effects under § 800.3(e) and subsequently complies with the provisions of § 800.13 or § 800.14, the Agency Official shall consult with them in carrying out the provisions of those sections.

§ 800.13 Emergency situations.

(a) Agency procedures. The Agency Official, in consultation with the appropriate State Historic Preservation Officer or Officers and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, the Agency Official or the governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.7.

(b) Alternatives to agency procedures. In the event an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, the Agency Official or the governor of a State, and the agency has not developed procedures pursuant to § 800.13(a), the Agency Official may comply with section 106 of the Act by:

(1) Following a programmatic agreement developed pursuant to § 800.15(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council and the appropriate State Historic Preservation Officer prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the Agency Official determines that circumstances do not permit seven days for comment, the Agency Official shall notify the Council and the State Historic Preservation Officer and invite any comments.

(c) Local governments responsible for Section 106 compliance. When a local government is statutorily delegated responsibility for Section 106 compliance, § 800.13 (a) and (b) also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or State Historic Preservation Officer objects within seven days, the Agency Official shall comply with §§ 800.3 through 800.7.

(d) Applicability. This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 of the Act and this subpart.

§ 800.14 Post-review discoveries.

(a) Planning for discoveries. When the Agency Official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official shall include in any finding of no adverse effect, standard treatment of potential adverse effects or Memorandum of Agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the Agency Official's responsibilities under section 106 of the Act and this subpart.

(b) Unplanned for discoveries. If historic properties are discovered or unanticipated effects on historic properties found after the Agency Official has completed the Section 106 process without establishing a process under § 800.14(a), the Agency Official shall make reasonable efforts to avoid or minimize adverse effects to such properties and:

(1) If the Agency Official has not approved the undertaking, consult to resolve adverse effects pursuant to § 800.6;

(2) If the Agency Official determines in consultation with the State Historic Preservation Officer that the affected property is significant solely for its scientific, prehistoric, historic or archeological data, comply with the Archeological and Historic Preservation Act, 16 U.S.C. 469 (a)–(c) instead of the procedures in this part, provided that the Agency Official shall consult with the State Historic Preservation Officer on the actions proposed and provide the Council with a report on the actions after they are completed; or

(3) If the Agency Official has approved the undertaking, the Agency Official shall:

(i) Determine actions that the Agency Official can take to resolve adverse effects;

(ii) Notify the State Historic Preservation Officer and the Council within 48 hours of the discovery;

(iii) Describe the actions proposed to resolve the adverse effects;

(iv) Take into account any recommendations provided by the Council and the State Historic Preservation Officer within 48 hours of the notification.

(v) Carry out appropriate actions; and

(vi) Provide the Council, the State Historic Preservation Officer and the interested public a report of the actions when completed.

(c) Eligibility of properties. When a newly discovered historic property has not previously been included in or determined eligible for the National Register, the Agency Official, in consultation with the State Historic Preservation officer, may assume the property to be eligible for purposes of section 106 of the Act.

Subpart C—Program Alternatives

§ 800.15 Federal agency program alternatives.

(a) Alternate procedures. A Federal agency may develop procedures to implement Section 106 and substitute them for the comparable provisions of subpart B if they are found consistent with the Council's regulations in accordance with section 110(a)(2)(E) of the Act.

(1) Development of procedures. The Federal agency shall consult with the Council in the development of alternate procedures and publish notice of the availability of proposed alternate procedures in the Federal Register.

(2) Council review. The Federal agency shall submit the final alternate procedure to the Council for review.

(i) If the Council finds the regulations to be consistent with this part, it shall notify the Federal agency and the Federal agency may adopt them as alternate procedures.

(ii) If the Council does not find the procedures consistent, the Council shall request the Secretary to make a final determination as to consistency. If the Secretary determines the procedures to be consistent, the Federal agency may adopt them as alternate procedures.

(3) Notice. The Federal agency shall publish notice of final alternate procedures in the Federal Register.

(4) Legal effect. Alternate procedures adopted pursuant to this section substitute for the Council's regulations for the purposes of the agency's compliance with section 106 of the Act, except that, where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's procedures, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands.

(b) Programmatic Agreements. The Council and the Agency Official may negotiate a Programmatic Agreement to govern the implementation of a particular program or certain complex project situations that justify departure from the normal Section 106 process.

(1) Programmatic Agreements for agency programs. (i) The consultation shall involve State Historic Preservation Officers or the National Conference of State Historic Preservation Officers, Indian tribes and Native Hawaiian organizations, other Federal agencies, and other members of the interested public, as appropriate.

(ii) The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the program.

(iii) The Programmatic Agreement shall take effect when executed by the Council and the Agency Official. The President of the National Conference of State Historic Preservation Officers shall be invited to sign any agreement when the Conference has participated in the consultation developing it. Compliance with the procedures established by an approved Programmatic Agreement satisfies the agency's Section 106 responsibilities for all individual undertakings covered by the agreement until it expires or is terminated by the agency or the Council.

(iv) The Agency Official shall publish notice of an approved Programmatic Agreement in the Federal Register and make any agency procedures implementing the agreement readily available to the Council, State Historic Preservation Officers, and the public.

(v) If the Council determines that the terms of a Programmatic Agreement are not being carried out, or if such an agreement is terminated, the Agency Official shall comply with subpart B with regard to individual undertakings covered by the agreement.

(2) Programmatic Agreements for complex or multiple undertakings. (i) A Programmatic Agreement is a Memorandum of Agreement that establishes a process for dealing with the potential adverse effects of complex projects or multiple undertakings carried out over an extended period of time. A Programmatic Agreement shall be used:

(A) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(B) When effects on historic properties cannot be fully determined prior to approval;

(C) When nonfederal parties are delegated major decisionmaking responsibilities; or

(D) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units.

(ii) Such a Programmatic Agreement shall be developed in the same manner as other Memoranda of Agreement under § 800.6, provided that if consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the Agency Official shall comply with the provisions of subpart B of this part for each individual undertaking.

(c) Exempted categories. (1) Criteria for establishing. An Agency Official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as ''undertakings'' as defined in § 800.17;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and not likely to be adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the Act.

(2) Council review of proposed exemptions. The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought and demonstrating that the criteria of § 800.15(c)(1) have been met. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt. The Council decision shall be based on whether the exemption is consistent with the purposes of the Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the Act.

(3) Legal consequences. Any undertaking that falls within the exempted program or category approved by the Council shall require no further review pursuant to subpart B, unless the Agency Official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(d) Standard treatments. (1) Establishment. The Council may establish standard methods for the treatment of a category of historic properties or a category of effects on historic properties to satisfy the requirements of subpart B of this part. The Council shall specify such treatments, conditions for their application and any procedural modifications attendant to their use in a notice published in the Federal Register.

(2) Legal consequence. An Agency Official may elect to follow a standard treatment to meet Section 106

responsibilities for a qualifying undertaking in accordance with § 800.5.

(e) Program comments. An Agency Official may request the Council to comment on a category of routine or repetitive undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.7. The Agency Official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the Agency Official will take to ensure that the effects are taken into account and the time period for which the comment is requested. Unless the Council requests additional documentation or notifies the Agency Official that it will decline to comment, the Council shall comment to the Agency Official within 45 days of the request. The Agency Official shall take into account the comments of the Council in carrying out the undertakings within the category and provide appropriate notice of the Council's comments and the Agency Official's action in response. If the Council objects to the proposed treatment or declines to comment, the Agency Official shall continue to comply with the requirements of §§ 800.4 through 800.7 for the individual undertakings. The Council may provide program comments at its own initiative.

§ 800.16 State, Tribal and Local Program Alternatives. (Reserved)

§ 800.17 Definitions.

Act means the National Historic Preservation Act of 1966 (16 U.S.C. 470–470w–6).

Agency means agency as defined in 5 U.S.C. 551.

Approval of the expenditure of funds means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal or rehearing procedure.

Area of potential effects means the geographic area or areas within which an undertaking could cause adverse effects on historic properties.

Comment means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106 of the Act.

Consultation means the process of seeking and considering the views of other participants in a manner appropriate to the particular participants and the specific steps in the Section 106 process.

Council means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

Effect means alteration to the characteristics of a historic property that qualified it for inclusion in or eligibility for the National Register.

Head of the agency means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has been delegated responsibility for Section 106 compliance, the head of that unit of government shall be considered the head of the agency.

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that meet the National Register criteria. The term ''eligible for inclusion in the National Register'' includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Indian tribe means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Local government means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

Memorandum of Agreement means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

National Historic Landmark means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

National Register means the National Register of Historic Places maintained by the Secretary of the Interior.

National Register Criteria means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

Native Hawaiian organization means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians. ''Native Hawaiian'' means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Programmatic Agreement means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program or other situations in accordance with § 800.15.

Secretary means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

State Historic Preservation Officer means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

Traditional cultural authority means an individual or a group of individuals in an Indian tribe, Native Hawaiian organization, or other social or ethnic group who is recognized by members of the group as knowledgeable in the group's traditional history, cultural practices and living human values.

Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Tribal Preservation Officer means the tribal official appointed by the tribe's chief governing authority or as designated by a tribal ordinance or preservation program as provided for and approved under the provisions of section 101 of the Act.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those financed in whole or in part with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

[FR Doc. 96–23532 Filed 9–12–96; 8:45 am]
BILLING CODE 4310–10–P

Federal Register

Friday
September 13, 1996

Part VII

Department of Health and Human Services

Centers for Disease Control and Prevention

Interim and Proposed Revision DTP/DTaP Vaccine Information Materials; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interim DTP/DTaP Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice.

SUMMARY: On July 31, 1996, the Food and Drug Administration (FDA) licensed an acellular pertussis vaccine (combined with diphtheria and tetanus toxoids) (DTaP) for administration to infants as young as 2 months of age. This recent development necessitates a revision of the vaccine information statement entitled, ''Diphtheria, Tetanus, and Pertussis Vaccine: What you need to know before your child gets the vaccine,'' which was developed by HHS as required by the National Childhood Vaccine Injury Act of 1986. A separate notice is being published in the Federal Register to begin formal revision of the statement under the procedures mandated by 42 U.S.C. § 300aa–26.

Pending completion of the formal revision process to revise the vaccine information statement, CDC is distributing the following interim statement which includes the new information regarding an acellular pertussis vaccine combined with diphtheria and tetanus toxoids (DTaP), to replace the current diphtheria, tetanus, and pertussis statement. This will ensure that individuals receiving the vaccine will have accurate up-to-date information which recognizes the recent licensure of an acellular pertussis vaccine combined with diphtheria and tetanus toxoids for administration to infants as young as 2 months of age.

DATES: Effective September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention (CDC), Mailstop E–O5, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Public Law 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. § 300aa–26, requires the Secretary of HHS to develop and disseminate vaccine information materials for distribution by health care providers to any patient (or to the parent or guardian in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

The vaccines currently covered under this program are diphtheria, tetanus, pertussis, measles, mumps, rubella, and poliomyelitis vaccines. Since April 15, 1992, any health care provider who intends to administer one of the covered vaccines is required to provide copies of the vaccine information materials prior to administration of any of these vaccines. The materials currently in use were published in a Federal Register notice on June 20, 1994 (59 FR 31888).

Development and revision of the vaccine information materials has been delegated by the Secretary to the CDC. Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the FDA. The law also requires that information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

Interim DTP/DTaP Vaccine Information Materials

On July 31, 1996, the FDA licensed Connaught's Tripedia® combined diphtheria and tetanus toxoids and acellular pertussis vaccine for administration to infants as young as two months of age. This recent development requires revision of the vaccine information statement entitled, ''Diphtheria, Tetanus, and Pertussis Vaccine: What you need to know before your child gets the vaccine.'' A Federal Register notice is being published simultaneously with this notice to begin formal revision of the statement under the procedures mandated by 42 U.S.C. § 300aa–26.

Pending completion of the formal revision process, CDC is distributing the following interim statement which includes the new information regarding this acellular pertussis vaccine combined with diphtheria and tetanus toxoids (DTaP), to replace the current diphtheria, tetanus, and pertussis statement. As soon as practicable, and until a formal revision of the current version of the vaccine information statement can be completed, health-care providers should use this interim statement, so that individuals receiving pertussis vaccine will have accurate up-to-date information. Single copies of this statement are available from State health departments.

Diphtheria, Tetanus, and Pertussis Vaccines

What You Need To Know Before Your Child Gets the Vaccines

About the Diseases

Diphtheria, tetanus (lockjaw), and pertussis (whooping cough) are serious diseases. Diphtheria and pertussis spread when germs pass from an infected person to the nose or throat of others. Tetanus is caused by a germ that enters the body through a cut or wound.

Diphtheria causes: a thick coating in the nose, throat, or airway. It can lead to:

—breathing problems
—heart failure
—paralysis
—death

Tetanus causes: serious, painful spasms of all muscles. It can lead to:

—''locking'' of the jaw so the patient cannot open his or her mouth or swallow
—death

Pertussis causes: coughing and choking for several weeks (makes it hard for infants to eat, drink, or breathe). It can lead to:

—pneumonia
—seizures (jerking and staring spells)
—brain damage
—death

About the Vaccines

Benefits of Vaccination

Vaccination is the best way to protect against diphtheria, tetanus, and pertussis. Because most children get the vaccines, there are now many fewer cases of these diseases. There would be many more cases if we stopped vaccinating children.

The Vaccines

DTP (*D*iphtheria *T*etanus *P*ertussis) DTP vaccine prevents diphtheria, tetanus, and pertussis. It has been used for many years in the United States.

DTaP (*D*iphtheria *T*etanus *a*cellular *P*ertussis) DTaP prevents diphtheria, tetanus, and pertussis. It is less likely to cause the mild and moderate problems we see after DTP.

Both DTP and DTaP are very effective for preventing all three diseases.

DT (*D*iphtheria *T*etanus) Unlike DTP and DTaP, it does not prevent pertussis.

For this reason, it is usually not recommended.

Schedule

Most children should have a total of 5 DTP or DTaP vaccinations. They should get these vaccinations at:

✔2 months of age
✔4 months of age
✔6 months of age
✔12–18 months of age
✔4–6 years of age

Other vaccines may be given at the same time as DTP or DTaP.

Who Should Get DTP or DTaP Vaccine?

Most doctors recommend that almost all young children get DTP or DTaP vaccine. Some children should get DT. With all vaccines there are some cautions.

Tell your doctor or nurse if the child getting the vaccine:

- ever had a serious allergic reaction or other problem after getting DTP, DTaP, or DT
- now has a moderate or serious illness
- has ever had a seizure
- has a parent, brother, or sister who has had seizures
- has a brain problem that is getting worse.

If you are not sure, ask your doctor or nurse.

What Are the Risks From These Vaccines?

As with any medicine, there are very small risks that serious problems, even death, could occur after getting a vaccine.

The risks from the vaccines are *much smaller* than the risks from the diseases if people stopped using vaccine.

Below is a list of problems that may occur after getting the vaccine. If your child ever had one of the moderate or severe problems listed below or any other serious problem after DTP, DTaP, or DT, discuss it with your doctor or nurse before this vaccination.

Mild Problems

If these problems occur, they usually start within hours to a day or two after vaccination. They usually last up to 1–2 days:

- soreness, redness, or swelling where the shot was given
- fever
- fussiness, drowsiness, less appetite

These problems are much less likely to occur with DTaP than with DTP.

Acetaminophen or ibuprofen (not aspirin) may be used to prevent or reduce fever and soreness. This is especially important for children who have had seizures or have a parent, brother, or sister who has had seizures.

Moderate Problems

Once for every 100–1,000 doses of DTP (less after DTaP):

- on-going crying for 3 hours or more
- fever of 105° or higher
- an unusual, high-pitched cry

Once for 1,750 doses of DTP (less after DTaP):

- a seizure (jerking and staring spell) usually caused by fever
- ''shock-collapse'' (becomes pale, limp, and less alert)

Severe Problems

These problems happen very rarely:

- decreased consciousness, coma, or long seizure following DTP. Some of these children may have lasting brain damage. There is disagreement about whether or not DTP causes the lasting brain damage. If it does, it is very rare. The risk of decreased consciousness, coma, or long seizure after DTaP is not yet known, but experts believe it is even less likely to occur than after DTP.
- a serious allergic reaction

What to do if there is a serious reaction:

☞ Call a doctor or get the person to a doctor right away.
☞ Write down what happened and the date and time it happened.
☞ Ask your doctor, nurse, or health department to file a Vaccine Adverse Event Report form, or you can call: (800) 822–7967 (toll-free)

The National Vaccine Injury Compensation Program gives compensation (payment) for persons thought to be injured by vaccines. For details call: (800) 338–2382 (toll-free).

If you want to learn more, ask your doctor or nurse. She/he can give you the vaccine package insert or suggest other sources of information.

DTP/DTaP September 13, 1996, (Interim), Vaccine Information Statement, 42 U.S.C. § 300aa–26.

Dated: September 10, 1996.

Arthur C. (Jack) Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–23589 Filed 9–12–96; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Revision—DTP/DTaP Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice with comment period.

SUMMARY: Under section 2126 of the Public Health Service Act, the CDC must develop vaccine information materials which health care providers are required to provide to patients/parents prior to administration of specific vaccines. CDC proposes to revise the vaccine information materials pertaining to diphtheria, tetanus, and pertussis vaccines so that they reflect the recent Food and Drug Administration (FDA) licensure of an acellular pertussis vaccine combined with diphtheria and tetanus toxoids (DTaP) for administration to infants as young as 2 months of age. CDC seeks written comment on these proposed materials.

DATES: Written comments are invited and must be received on or before November 12, 1996.

ADDRESSES: Written comments should be addressed to Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention (CDC), Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention (CDC), Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Public Law 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. § 300aa–26, requires the Secretary of HHS to develop and disseminate vaccine information materials for distribution by health care providers to any patient (or to the parent or guardian in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

The vaccines currently covered under this program are diphtheria, tetanus, pertussis, measles, mumps, rubella, and poliomyelitis vaccines. Since April 15, 1992, any health care provider who intends to administer one of the covered vaccines is required to provide copies of the vaccine information materials prior to administration of any of these vaccines. The materials currently in use were published in a Federal Register notice on June 20, 1994 (59 FR 31888).

Development and revision of the vaccine information materials has been delegated by the Secretary to the CDC. Section 2126 requires that the materials

be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the FDA. The law also requires that information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

Proposed Revisions to the Diphtheria, Tetanus, and Pertussis Vaccine Information Materials

On July 31, 1996, the FDA licensed Connaught's Tripedia® combined diphtheria and tetanus toxoids and acellular pertussis vaccine (DTaP) for administration to infants as young as two months of age (i.e., doses one through four). Previously, DTaP vaccines were licensed only for administration as the 4th or 5th doses of the DTP series. No other acellular pertussis vaccine is currently licensed for use in infants. The recent licensure of Tripedia® DTaP requires revision of the vaccine information statement entitled, ''Diphtheria, Tetanus, and Pertussis Vaccine: What you need to know before your child gets the vaccine,'' to reflect the changed availability of this vaccine.

We invite written comment on the proposed diphtheria, tetanus, and pertussis vaccine information statement included in this notice, entitled ''Diphtheria, Tetanus, and Pertussis Vaccines: What you need to know before your child gets the vaccines.'' CDC also intends to consult with the Advisory Commission on Childhood Vaccines, health care provider and parent organizations, and the FDA, as mandated under section 2126, prior to finalizing these materials.

Diphtheria, Tetanus, and Pertussis Vaccines

What You Need to Know Before Your Child Gets the Vaccines

About the Diseases

Diphtheria, tetanus (lockjaw), and pertussis (whooping cough) are serious diseases. Diphtheria and pertussis spread when germs pass from an infected person to the nose or throat of others. Tetanus is caused by a germ that enters the body through a cut or wound.

Diphtheria causes a thick coating in the nose, throat, or airway. It can lead to:

—breathing problems
—heart failure
—paralysis
—death

Tetanus causes: serious, painful spasms of all muscles. It can lead to:

—''locking'' of the jaw so the patient cannot open his or her mouth or swallow
—death

Pertussis causes: coughing and choking for several weeks (makes it hard for infants to eat, drink, or breathe). It can lead to:

—pneumonia
—seizures (jerking and staring spells)
—brain damage
—death

About the Vaccines

Benefits of Vaccination

Vaccination is the best way to protect against diphtheria, tetanus, and pertussis. Because most children get the vaccines, there are now many fewer cases of these diseases. There would be many more cases if we stopped vaccinating children.

The Vaccines

DTP (Diphtheria Tetanus Pertussis) DTP vaccine prevents diphtheria, tetanus, and pertussis. It has been used for many years in the United States.

DTaP (Diphtheria Tetanus acellular Pertussis) DTaP prevents diphtheria, tetanus, and pertussis. It is less likely to cause the mild and moderate problems we see after DTP.

Both DTP and DTaP are very effective for preventing all three diseases.

DT (Diphtheria Tetanus) Unlike DTP and DTaP, it does not prevent pertussis. For this reason, it is usually not recommended.

Schedule

Most children should have a total of 5 DTP or DTaP vaccinations. They should get these vaccinations at:

✔2 months of age
✔4 months of age
✔6 months of age
✔12–18 months of age
✔4–6 years of age

Other vaccines may be given at the same time as DTP or DTaP.

Who should get DTP or DTaP vaccine?

Most doctors recommend that almost all young children get DTP or DTaP vaccine. Some children should get DT. With all vaccines there are some cautions.

Tell your doctor or nurse if the child getting the vaccine:

- ever had a serious allergic reaction or other problem after getting DTP, DTaP, or DT
- now has a moderate or serious illness
- has ever had a seizure
- has a parent, brother, or sister who has had seizures
- has a brain problem that is getting worse.

If you are not sure, ask your doctor or nurse.

What are the risks from these vaccines?

As with any medicine, there are very small risks that serious problems, even death, could occur after getting a vaccine.

The risks from the vaccines are *much smaller* than the risks from the diseases if people stopped using vaccine.

Below is a list of problems that may occur after getting the vaccine. If your child ever had one of the moderate or severe problems listed below or any other serious problem after DTP, DTaP, or DT, discuss it with your doctor or nurse before this vaccination.

Mild Problems

If these problems occur, they usually start within hours to a day or two after vaccination. They usually last up to 1–2 days:

- soreness, redness, or swelling where the shot was given
- fever
- fussiness, drowsiness, less appetite

These problems are much less likely to occur with DTaP than with DTP.

Acetaminophen or ibuprofen (not aspirin) may be used to prevent or reduce fever and soreness. This is especially important for children who have had seizures or have a parent, brother, or sister who has had seizures.

Moderate Problems

Once for every 100–1,000 doses of DTP (less after DTaP):

- on-going crying for 3 hours or more
- fever of 105° or higher
- an unusual, high-pitched cry

Once for 1,750 doses of DTP (less after DTaP):

- a seizure (jerking and staring spell) usually caused by fever
- ''shock-collapse'' (becomes pale, limp, and less alert)

Severe Problems

These problems happen very rarely:

- decreased consciousness, coma, or long seizure following DTP. Some of these children may have lasting brain

damage. There is disagreement about whether or not DTP causes the lasting brain damage. If it does, it is very rare. The risk of decreased consciousness, coma, or long seizure after DTaP is not yet known, but experts believe it is even less likely to occur than after DTP.

- a serious allergic reaction

What to do if there is a serious reaction:

☞Call a doctor or get the person to a doctor right away.

☞Write down what happened and the date and time it happened.

☞Ask your doctor, nurse, or health department to file a Vaccine Adverse Event Report form, or you can call: (800) 822–7967 (toll-free)

The National Vaccine Injury Compensation Program gives compensation (payment) for persons thought to be injured by vaccines. For details call: (800) 338–2382 (toll-free)

If you want to learn more, ask your doctor or nurse. She/he can give you the vaccine package insert or suggest other sources of information.

DTP/DTaP 00/00/00 (Proposed), Vaccine Information Statement, 42 U.S.C. § 300aa–26

Dated: September 10, 1996.

Arthur C. (Jack) Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

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