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Monday
September 23, 1996

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WASHINGTON, DC

WHEN: October 22, 1996 at 9:00 a.m.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH58

Prevailing Rate Systems; Abolishment of Norfolk, MA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to abolish the Norfolk, MA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine its five counties as areas of application to nearby NAF wage areas for pay-setting purposes. No permanent employee's wage rate will be reduced as a result of this change.

DATES: This interim rule becomes effective on September 23, 1996. Comments must be received by October 23, 1996. Employees currently paid rates from the Norfolk, MA, NAF wage schedule will continue to be paid from that schedule until their conversion to the schedules of the wage areas to which their counties of employment are being redefined by this rule on November 15, 1996, one day prior to the next adjustment of the Middlesex, MA, NAF schedule.

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

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

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to OPM that the Norfolk, MA, NAF FWS wage area be abolished and that the five counties having continuing FWS employment be redefined as areas of application to nearby NAF wage areas. Norfolk County, Plymouth County, and Suffolk County, MA, are being redefined to the Middlesex, MA, wage area. Barnstable County and Nantucket County, MA, are being redefined to the Newport, RI, wage area. This change is necessary because the pending closure of Naval Air Station, South Weymouth, MA, leaves the Norfolk, MA, NAF wage area without an activity having the capability to conduct a wage survey.

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

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

All regulatory factors favor redefinition of Norfolk County and Suffolk County to the adjacent Middlesex, MA, NAF wage area.

For Plymouth County, proximity slightly favors (10 kilometers or 6 miles) Newport, RI; however, the remaining regulatory factors—i.e., commuting patterns and overall population and industrial patterns—both favor Middlesex, MA.

Commuting patterns for Barnstable County and Nantucket County slightly favor Middlesex, MA, but proximity and overall population and industrial patterns both favor Newport, RI.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days because the next Norfolk, MA, NAF wage survey would otherwise be required to begin in September 1996.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

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

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

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

PART 532—PREVAILING RATE SYSTEMS

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

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

Appendix B to Subpart B of Part 532—[Amended]

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

3. Appendix D to subpart B is amended by removing the wage area list for Norfolk, Massachusetts, and by revising the lists for Middlesex, Massachusetts, and Newport, Rhode Island, to read as follows:

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

* * * * *

Massachusetts

Middlesex

Survey Area

Massachusetts:
Middlesex

Area of application. Survey area plus:

Massachusetts:
Norfolk
Plymouth
Suffolk
New Hampshire:
Hillsborough

* * * * *

Rhode Island

* * * * *

Newport

Survey Area

Rhode Island:
Newport

Area of application. Survey area plus:

Massachusetts:
Barnstable
Nantucket

Rhode Island:
Providence
Washington

* * * * *

[FR Doc. 96–24156 Filed 9–20–96; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96–906–1 FIR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the Texas Valley Citrus Committee (Committee) under Marketing Order No. 906 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501, telephone (210) 682–2833, FAX # (210) 682–5942, or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 690–3670, FAX # (202) 720–5698.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, handlers of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 2,000 producers of oranges and grapefruit in the production area and 19 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of orange and grapefruit producers and handlers may be classified as small entities.

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

The Committee met on May 29, 1996, and recommended 1996–97 expenditures of $1,085,130 and an assessment rate of $0.125 per 7/10 bushel carton of oranges and grapefruit. In comparison, last year's budgeted expenditures were $1,008,643. The assessment rate of $0.125 is $0.025 higher than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 fiscal year include $712,800 for advertising and $174,000 for the Mexican Fruit Fly support program. Budgeted expenses for these items in 1995–96 were $500,000 for advertising and $174,000 for the Mexican Fruit Fly support program.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 8 million cartons which should provide $1,000,000 in assessment income. Income derived from handler assessments, along with interest income

and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the July 22, 1996, issue of the Federal Register (61 FR 37810). That rule provided for a 30-day comment period. No comments were received.

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

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

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action, providing a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 906

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

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 61 FR 37810 on July 22, 1996, is adopted as a final rule without change.

Dated: September 17, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24240 Filed 9–20–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 916 and 917

[Docket No. FV96–916–1 FIR]

Nectarines and Fresh Peaches Grown in California; Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) under Marketing Order Nos. 916 and 917 for the 1996–97 and subsequent fiscal periods. The Committees are responsible for local administration of the marketing orders which regulate the handling of nectarines and fresh peaches grown in California. Authorization to assess nectarine and fresh peach handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, (209) 487–5901, FAX (209) 487–5906, or Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 916 and Order No. 916, both as amended (7 CFR part 916), regulating the handling of nectarines grown in California, and Marketing Agreement No. 917 and Order No. 917, both as amended (7 CFR part 917), regulating the handling of fresh peaches grown in California, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, California nectarine and fresh peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable nectarines and peaches beginning March 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 1,800 producers of nectarines and peaches in the production area and approximately 300 handlers subject to regulation under the marketing orders. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of nectarine and fresh peach producers and handlers may be classified as small entities.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of the Department, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers of California nectarines and fresh peaches. They are familiar with the Committees' needs and with the costs for goods and services in their local area and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Nectarine Administrative Committee met on May 2, 1996, and unanimously recommended 1996–97 expenditures of $3,682,728 and an assessment rate of $0.1850 per 25-pound container or equivalent of nectarines. In comparison, last year's budgeted expenditures were $3,683,031. The assessment rate of $0.1850 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $1,326,376 for domestic market development, $972,300 for inspection, $342,250 in salaries and benefits, and $120,870 for research. Budgeted expenses for these items in 1995–96 were $1,534,593, $855,000, $340,025, and $99,117 respectively.

The Peach Commodity Committee met on May 1, 1996, and unanimously recommended 1996–97 expenditures of $3,722,757 and an assessment rate of $0.1900 per 25-pound container or equivalent of fresh peaches. In comparison, last year's budgeted expenditures were $3,736,531. The assessment rate of $0.1900 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $1,326,376 for domestic market development, $991,500 for inspection, $342,250 in salaries and benefits, and $120,870 for research. Budgeted expenses for these items in 1995–96 were $1,534,593, $900,000, $340,025, and $99,117 respectively.

The assessment rates recommended by the Committees were derived by dividing anticipated expenses by expected shipments of California nectarines and fresh peaches. Nectarine shipments for the year are estimated at 17,266,000 25-pound containers or equivalent which should provide $3,194,210 in assessment income, and fresh peach shipments for the year are estimated at 17,250,000 25-pound containers or equivalent which should provide $3,277,500 in assessment income. Income derived from handler assessments, the Plum Commodity Committee, and the Pear Field Service, along with interest income and funds from the Committees' authorized reserves, will be adequate to cover budgeted expenses. Funds in the reserves will be kept within the maximum permitted by the orders.

An interim final rule regarding this action was published in the July 22, 1996, issue of the Federal Register (61 FR 37812). That rule provided for a 30-day comment period. Two comments were received, both in support of the assessment rates as published.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders.

Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal periods began on March 1, 1996, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable nectarines and peaches handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committees at public meetings and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period. Two comments were received, both in support of the assessment rates as published.

List of Subjects

7 CFR Part 916

Nectarines, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 917

Peaches, Pears, Marketing agreements, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 61 FR 37812 on July 22, 1996, is adopted as a final rule.

Dated: September 16, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24239 Filed 9–20–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 920

[Docket No. FV96–920–1 FIR]

Kiwifruit Grown in California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, FAX# (209) 487–5906, or Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX# (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX# (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The marketing 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 500 producers of kiwifruit in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of kiwifruit producers and handlers may be classified as small entities.

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

The Committee met on June 12, 1996, and unanimously recommended 1996–97 expenditures of $178,598 and an assessment rate of $0.0175 per tray or tray equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $172,683. The assessment rate of $0.0175 per tray or tray equivalent is $0.0025 higher than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $108,500 for administrative staff and field salaries, $20,398 for travel, food and lodging and $13,000 for accident and health insurance. Budgeted expenses for these items in 1995–96 were $102,850, $19,798 and $13,050, respectively.

In the interim final rule, an expense of $650 for management/staff food & lodging, was inadvertently omitted. This would modify the total amount for travel, food and lodging to be $20,398.

The assessment rate recommended by the Committee was derived by dividing

anticipated expenses by expected shipments of California kiwifruit. Kiwifruit shipments for the year are estimated at 10.5 million trays or tray equivalents of kiwifruit which should provide $183,750 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the August 5, 1996, issue of the Federal Register (61 FR 40506). That rule provided for a 30-day comment period. No comments were received.

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

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

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action, providing a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 61 FR 40506 on August 5, 1996, is adopted as a final rule without change.

Dated: September 17, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24237 Filed 9–20–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket No. 96–21]

RIN 1557–AB46

Community Development Corporation and Project Investments and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: As part of its Regulation Review Program, the Office of the Comptroller of the Currency (OCC) is revising its regulation governing national bank investments designed primarily to promote the public welfare. This final rule clarifies banks' authority; renumbers and reorganizes sections of the regulation; modifies the test for determining whether investments primarily promote the public welfare; and simplifies the regulation's investment self-certification and prior approval processes. This final rule reduces regulatory burden and inconsistencies while enhancing the ability of national banks to make community development and other public welfare investments.

EFFECTIVE DATE: October 23, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Bellesi, Acting Deputy Director, Community Development Division, (202) 874–4940; or Michele Meyer, Senior Attorney, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC has reviewed 12 CFR part 24 as part of its Regulation Review Program (Program). Goals of the Program are eliminating provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities, updating and modernizing the OCC's rules where appropriate, and clarifying the OCC's regulations to convey more effectively the standards the OCC seeks to apply. Consistent with these goals, this final rule reduces regulatory burden on national banks and clarifies the standards that the OCC applies to national banks' community development and public welfare investment programs.

The Proposal

On December 28, 1995, the OCC published a notice of proposed rulemaking (NPRM) (60 FR 67091) to revise 12 CFR part 24. Part 24 implements 12 U.S.C. 24(Eleventh), which authorizes national banks to make investments ''designed primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities (such as through the provision of housing, services, or jobs),'' subject to certain percentage of capital limitations.

As initially written, part 24 placed predominant emphasis on community development investments. Part 24 permitted national banks to make investments in community development corporations (CDCs) and community development projects (CD Projects), consistent with safe and sound banking practices. Under part 24, banks could self-certify certain community development investments. Investments that were not eligible for self-

certification were subject to one of two prior approval processes. The first required a bank to file an investment proposal, which the OCC usually approved or disapproved within 30 days. The second consisted of a five-day review period for investment proposals that the OCC had previously approved for another bank.

In the NPRM, the OCC proposed replacing part 24's public welfare test with modified criteria for determining whether an investment promotes the public welfare, including a non-exhaustive list of permissible public welfare activities. The NPRM also proposed streamlining part 24's investment self-certification and prior approval provisions. In addition, the NPRM removed redundant or otherwise unnecessary provisions from the former rule and made several other changes intended to improve the rule's clarity. Finally, the NPRM asked for comment on whether the OCC should continue its policy of not using part 24 authority as a basis for approving an investment that is otherwise permissible under 12 U.S.C. 24(Seventh).

The Final Rule and Comments Received

The OCC received seven comments. Most commenters supported the proposed changes. Comments were submitted by three national banks, one savings bank, two trade groups, and one national non-profit organization that provides support for local non-profit CDCs. As discussed later in this preamble, several commenters supported the proposal but suggested that the OCC make additional changes, and one commenter opposed the proposed changes to the former rule's public welfare test and self-certification provisions. The following discussion summarizes these comments and the amendments to part 24.

Title

The NPRM proposed changing the title of part 24 from ''Community Development Corporation and Project Investments'' to ''Community Development Corporation and Project Investments and other Public Welfare Investments.'' This change reflects the OCC's view that national banks can promote the public welfare through a variety of authorized investments, as described in § 24.3, in addition to CDCs and CD Projects. The OCC received no comments on this issue, and accordingly adopts the proposed title change.

Authority, Purpose, and OMB Control Number (§ 24.1)

The NPRM proposed amending the ''purpose'' paragraph of the regulation to reflect that CDCs and CD Projects that develop affordable housing, foster revitalization and stabilization of low- and moderate-income areas, or provide equity or debt financing for small businesses are just some of the types of investments that a national bank can make under part 24. The preamble to the NPRM emphasized that the OCC continues to encourage national banks to make these types of investments but also stressed that banks may undertake other kinds of public welfare investments. The OCC received no comments specifically on this proposed section. However, as discussed later in this preamble, the OCC received comments on proposed § 24.3 that resulted in modifications to that section to provide that banks' part 24 investments benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal or Federal government. Consistent with the change to § 24.3, the OCC adopts proposed § 24.1 with a modification to the ''purpose'' paragraph to clarify that bank efforts to promote the public welfare through small business investment or area revitalization or stabilization must be targeted to low- and moderate-income areas or other redevelopment areas.

Definitions (§ 24.2)

In keeping with the Regulation Review Program's goal of using terminology consistently throughout the OCC's regulations, the NPRM proposed the use of definitions and terms common to other OCC regulations. For example, the definition of ''low-income and moderate-income'' in the NPRM referred to the OCC's CRA Regulation (12 CFR part 25). One commenter supported the OCC's efforts to standardize various definitions in its regulations, but voiced the concern that the CRA definition of ''low-income and moderate-income'' was more restrictive than the definition in the former part 24.

Under the former rule and the OCC's CRA regulation, low- and moderate-income *individuals* are individuals whose incomes are less than 80 percent of the median income of the area in which they live. The former rule defined low- and moderate-income *areas* slightly differently from the OCC's CRA regulation, however. The former rule defined low- and moderate-income areas as areas where at least 51 percent of the residents are low- and moderate-income persons and families. The CRA regulation defines low- and moderate-income areas as areas where at least 50 percent of the families have incomes less than 80 percent of the area median family income. 12 CFR 25.12. Thus, the CRA regulation is slightly more expansive in its definition of low- and moderate-income areas than the former rule. The OCC believes that the difference between the two definitions is insignificant and that adopting the CRA regulation definition of low-and moderate-income in this final rule will enhance its clarity and reduce the burden associated with having different definitions of the same terms in the OCC's regulations. Accordingly, the OCC adopts the proposed definition of ''low-income and moderate-income.''

The NPRM also proposed using the same definition of ''capital and surplus'' as the OCC's Lending Limit Regulation, 12 CFR part 32, which refers to components of capital that national banks calculate for purposes of determining their risk-based capital under 12 CFR part 3. The OCC received no comments on this section and, accordingly, adopts the proposed definition of ''capital and surplus.''

The NPRM omitted the former rule's definitions of community development limited partnership and community-based development corporation as unnecessary further examples of vehicles that national banks may use to make investments under this part. The OCC received no comments on this proposed removal, and accordingly adopts the proposed change. This change does not affect a national bank's authority to invest in a community development limited partnership or community based development corporation. Consistent with the requirements of this part, a national bank may continue to invest in these and other vehicles.

The NPRM proposed adding a definition of ''eligible bank'' that is the same as the ''eligible bank'' definition proposed by the OCC for corporate applications in its November 29, 1994 notice of proposed rulemaking concerning 12 CFR part 5 (59 FR 61034). The NPRM proposed allowing a bank to self-certify investments for purposes of part 24 if it has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System, has at least a satisfactory CRA rating, is well capitalized, and is not subject to any current OCC enforcement actions. One commenter suggested that the final rule limit self-certification eligibility to only banks with outstanding CRA ratings. The OCC declines to make this change for two reasons. First, part 24

investments represent an important mechanism for banks to improve their CRA records. Second, limiting self-certification to banks with outstanding CRA ratings would result in far fewer banks benefiting from the streamlined self-certification processes proposed in the NPRM. The OCC accordingly adopts the proposed definition of ''eligible bank'' with only a technical clarification that the definition applies to the self-certification process.

The NPRM also clarified that a national bank that is at least adequately capitalized and that has a composite rating of at least 3 with improving trends may submit a letter to the OCC's Community Development Division requesting permission to self-certify investments. The OCC received no comments on this clarification. Accordingly, the final rule permits a national bank that is at least adequately capitalized and that has a composite rating of at least 3 with improving trends to submit a letter to the OCC's Community Development Division requesting permission to self-certify investments.

In addition, in a change from the former rule, the NPRM proposed permitting a bank that is subject to a current OCC enforcement action to seek permission to self-certify investments. As explained in the preamble to the NPRM, the OCC believes this modification is appropriate in light of the final rule's expanded self-certification opportunities for banks (*See* § 24.6.) Accordingly, the final rule adopts this change.

In addition, the NPRM proposed changing the definition of ''significant risk to the deposit insurance fund'' to include risk to all Federal deposit insurance funds. The OCC received no comments on this proposed section and, accordingly, adopts the proposed change.

Finally, the NPRM proposed making two changes concerning the small business definitions in former part 24. First, the NPRM proposed removing the definition of ''minority-owned small businesses'' because these businesses are encompassed by the regulation's provisions concerning all small businesses. Second, the NPRM proposed updating the citation to the Small Business Administration regulations referenced in the definition of ''small businesses'' in the former regulation. The OCC received no comments on these proposed changes and, accordingly, adopts them with the clarification that the definition of ''small business'' includes minority-owned small business.

Public Welfare Investments (§ 24.3)

Former part 24 delineated a public welfare test that consisted of four requirements. Under former § 24.4, an investment in a CDC or CD Project was designed primarily to promote the public welfare only if: (1) the investment primarily benefited low- and moderate-income persons and families or small businesses; (2) the investment addressed community development needs not met by the private market in one or more communities served by the bank; (3) there was nonbank community involvement in the CDC or CD Project; *and* (4) the profits and distributions from a CDC or CD Project were reinvested in activities that primarily promote the public welfare.[1]

Based on the OCC's experience since it adopted part 24, the NPRM proposed replacing the public welfare test with modified criteria for determining whether an investment primarily promotes the public welfare. That list retained the first element of the public welfare test, the requirement for a primary benefit to low- and moderate-income individuals or small businesses, but made clear that this benefit could be provided in a variety of ways. For example, § 24.3(a) of the NPRM permitted banks to invest in affordable housing, community revitalization projects, small business financing or ''other activities, services, or facilities conducive to the public welfare.'

The list of public welfare investment criteria also modified the private market financing and community involvement elements of the current public welfare test. Proposed § 24.3(b) required a bank to demonstrate only that it was difficult, rather than impossible, to obtain private market financing. Section 24.3(c) of the proposal also required a bank to demonstrate community support for or participation in a proposed investment, but, unlike the former rule, it did not prescribe any particular method of demonstrating that support or participation.[2]

In addition, § 24.3(d) of the NPRM permitted a bank to make an investment that also benefitted an area outside those where the bank provides its core banking services. However, the bank would still have been required to demonstrate the extent to which its investment benefits the communities where it provides these services. These proposed revisions to the public welfare test reflected the OCC's willingness to consider a wider range of public welfare investments than under the former rule.

All but one of the commenters voiced strong support for the proposed revisions to the public welfare test. The objecting commenter, a national non-profit organization that provides support for local non-profit CDCs, strongly supported the former rule and expressed concern that the proposal undermines the intent of 12 U.S.C. 24(Eleventh), because the revised criteria would discourage banks from taking on difficult community development projects, such as those targeted to low- and moderate-income areas where private market financing is difficult to obtain. The OCC appreciates these concerns and has modified § 24.3 to clarify that investments must benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal or Federal government. The OCC has also modified § 24.3 to require that a bank demonstrate that it is not *reasonably practicable* to obtain other private market financing for a proposed investment. In addition, the OCC agrees with the commenter's opinion that the phrase ''conducive to the public welfare'' in proposed § 24.3(a)(4) could be misinterpreted by some readers as a lowering of the statutory requirement that banks' investments must ''primarily promote the public welfare.'' Accordingly, the OCC has revised § 24.3(a)(4) to clarify that all investments under this part must primarily promote the public welfare.

Two commenters, although supportive of the proposed changes to the community participation requirement, requested that the final rule include a list of examples for demonstrating community support for, or participation in, a proposed investment. Based on these comments, the OCC has revised the community participation criterion to include the following examples:

- In the case of an investment in a CD entity with a board of directors, representation on the board of directors by non-bank community representatives with expertise relevant to the proposed investment;
- Establishment of an advisory board for the bank's community development activities that includes non-bank community representatives with expertise relevant to the proposed investment;

[1] On December 28, 1995, the OCC published a final rule eliminating part 24's reinvestment requirement. 60 FR 67049.

[2] The former rule required a bank to demonstrate nonbank community involvement in a CDC or CD project by indicating support from the affected primary beneficiaries and representatives of local government. In the case of a CD entity with a board of directors, a bank was required to demonstrate such support by the composition of the organization's board of directors.

• Formation of a formal business relationship with a community-based organization in connection with the proposed investment;

• Contractual agreements with community partners to provide services in connection with the proposed investment;

• Joint ventures with local small businesses in the proposed investment; and

• Financing for the proposed investment from the public sector or community development organizations.

The OCC emphasizes, however, that these examples are by no means exhaustive; banks and their community partners may determine other acceptable ways to demonstrate community support for, or participation in, investments under this part.

To improve clarity, the final rule reverses the order of the sections concerning community participation and benefit to communities otherwise served by the bank. Thus, the community participation section is now set forth at § 24.3(d) of the final rule, and the section concerning benefit to communities otherwise served by the bank is set forth at § 24.3(c).

Finally, the NPRM proposed removing as unnecessary former § 24.4(e), which provided that a bank must manage its CDC and CD Project investments in a prudent manner. The OCC received no comments on the proposed removal and, accordingly, adopts the proposed change. This change streamlines the regulation and, of course, reflects no change in the applicable standard that national banks must manage their part 24 investments—as with all their investments—consistent with safe and sound banking practices.

Investment Limits (§ 24.4)

The former rule contained investment limit provisions at § 24.4(b) and (d). For ease of reference, the NPRM grouped the provisions concerning part 24 investment limits into a separately titled section. Section 24.4(a) of the NPRM clarified that, as provided in 12 U.S.C. 24(Eleventh), a bank's aggregate outstanding investments under part 24 may not exceed 5 percent of its capital and surplus unless the bank is at least adequately capitalized and the OCC determines, by written approval of a proposed investment, that a higher amount, up to 10 percent, will pose no significant risk to the deposit insurance fund.

One commenter suggested that the final rule permit an adequately capitalized bank with assets up to $150 million to commit up to ten percent of its capital and surplus to part 24 investments. As explained earlier, however, the statute requires a bank to seek OCC approval of investments that exceed 5 percent of capital. Accordingly, the OCC adopts the statutory limitation proposed in the NPRM.

Public Welfare Investment Self-Certification and Prior Approval Procedures (§ 24.5)

The NPRM proposed changes to the self-certification and prior approval procedures set forth in § 24.11 of the former rule. Former § 24.11 provided three processes for approval of authorized investments. The first required a bank to file an investment proposal, which the OCC usually approved or disapproved within 30 days. The second process consisted of a five-day review period by the OCC for investment proposals that the OCC had previously approved for another bank. The third was a self-certification process for certain investments, under which a bank filed a notice with the OCC within 10 days after it makes an investment, and the OCC sent a confirmation of receipt within five days.

The NPRM proposed eliminating the second approval process. Thus, under § 24.5(a) and § 24.6(a) of the NPRM, a bank would be permitted to self-certify an investment previously approved by the OCC for another bank. The preamble to the NPRM further provided that the OCC will continue its practice of sending a simple confirmation of receipt of a bank's self-certification notice within five days. The NPRM also made clear that the OCC will not retroactively review a self-certified investment proposal, but simply will review the self-certification documents to ensure that they meet the self-certification requirements set forth in § 24.5(a). The OCC received no comments on the proposed elimination of the approval process for investments previously approved by the OCC for another bank and, accordingly, adopts this change.

Section 24.5(b) of the NPRM sets forth the prior approval procedures for investment proposals that do not qualify for self-certification.[3] In considering a bank's investment proposal under the NPRM, the OCC will consider whether the investment satisfies the requirements of § 24.3 and whether it is consistent with the bank's safe and sound operation and the OCC's policies. As explained in the NPRM's preamble, the OCC will continue its practice of sending a simple confirmation of receipt of an investment proposal within five days. Consistent with the former rule, the NPRM permitted a bank, unless notified otherwise by the OCC, to make a proposed investment 30 calendar days after the date on which the OCC received the bank's investment proposal. The NPRM further provided that the OCC may notify the bank that it is extending the review period. If so notified, the bank could make the investment only with the OCC's written approval. One commenter suggested that the final rule require that, within 30 days of the OCC's receipt of a bank's investment proposal, the OCC notify the bank of the proposal's status by facsimile or telephone. The OCC declines to include this level of detail in the final rule but will endeavor to notify banks of proposal status as quickly as possible. Accordingly, the OCC adopts the proposed procedures for prior approval of investment proposals.

Former rule § 24.11(b) contained a limit on the size of investments eligible for self-certification by banks with more than $250 million in assets. Those banks were required to seek prior OCC approval for investments that exceeded the lesser of 2 percent of their unimpaired capital and surplus or $10 million. The NPRM proposed removing this additional limitation in light of the proposed new standards that define the banks eligible to use the self-certification process (discussed earlier). The OCC received no comments on this proposed removal and, accordingly, the final rule adopts the proposed change.

Investments Eligible for Self-Certification (§ 24.6)

Section 24.6 of the NPRM proposed replacing former rule § 24.13, which limited self-certification to investments using certain structures as well as certain activities. These structures included multi-bank CDCs; CDCs established by state or local government; community-based organizations; and certain community development limited partnerships. A CDC subsidiary was not an eligible structure for self-certification.

The OCC believes that a structure-based self-certification limitation is no longer necessary. This limitation was intended to allow the OCC to ensure that particular investments did not expose banks to safety and soundness risks or unlimited liability, particularly relating to then-novel structures, such as limited liability companies and CD

[3] The NPRM proposed removing the former rule's provision for optional review as unnecessary. The OCC received no comments on this proposed removal, and accordingly adopts the proposed change. A national bank may, however, continue to request prior OCC review and approval of any investment proposal, including one that qualifies for self-certification.

banks. However, since self-certification is limited to eligible banks (as defined in § 24.2(e) of the final rule), the OCC believes it is reasonable to rely on bank management to determine the appropriate structures for part 24 investments. The OCC received no comments on the proposed elimination of the list of eligible structures and, accordingly, adopts the proposed change.

In addition to eliminating the list of eligible structures, § 24.6(a) of the NPRM proposed an expanded list of activities eligible for self-certification to reflect the industry's innovation in part 24 investing and the OCC's experience with self-certification under part 24. Part 24's self-certification provisions encourage community development and other public welfare investments by banks by reducing the regulatory steps associated with making the investments. In order to maximize the use of self-certification as an incentive for banks to make investments that primarily promote the public welfare, and to encourage banks' creativity in making these investments, the OCC identified in proposed § 24.6(a) a clear and expanded list of eligible activities. In addition to the former rule's list of eligible activities, the NPRM's list included, but was not limited to, certain investments that benefit low- and moderate-income persons and small businesses, investments that previously have been determined by the OCC to be permissible under part 24, and investments previously approved by the Federal Reserve Board (FRB) under 12 CFR 208.21 for state member banks.

One commenter suggested several changes to the proposed list of activities eligible for self-certification. The commenter recommended deleting from the list investments in an entity that acquires housing for low- and moderate-income persons. The OCC believes, however, that this activity, which was eligible for self-certification under the former rule, promotes the public welfare and that permitting self-certification of such investments is therefore consistent with the statute and accordingly declines to remove it from the proposed list. The commenter also requested that the list clarify that a bank may self-certify investments as a limited partner, or as a partner in an entity that it itself a limited partner, in a project with a general partner that is, or is primarily owned and operated by, a 26 U.S.C. 501(c) (3) or (4) non-profit corporation and that qualifies for the Federal low-income housing tax credit. The OCC agrees with this suggestion and accordingly adopts the proposed clarification.

In addition, the commenter suggested that the final rule bar from self-certification any bank that self-certifies an investment the OCC later determines was ineligible for self-certification. The OCC believes that this concern is addressed by the remedial action provisions of proposed § 24.7(c). Finally, the commenter objected to the proposed inclusion of investments of a type approved by the FRB in the list of eligible activities. The OCC believes that national banks and the beneficiaries of their investments will benefit by the increased flexibility and reduced burden associated with this provision, but agrees that no investment can be self-certified, even if that type of investment has been approved by the FRB, unless it meets the criteria for public welfare investments set forth in § 24.3. Accordingly, this provision has been modified in the final rule.

As discussed earlier, the OCC has modified § 24.3 to require that bank investments be targeted to low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment. The OCC has decided, however, to modify the list of activities eligible for self-certification proposed in § 24.6(a) of the NPRM to clarify that a bank may self-certify an investment only if it primarily benefits low- and moderate-income individuals or areas. National banks must therefore submit for prior approval by the OCC proposals for other types of investments. The distinction between what is a permissible investment under § 24.3 and what is eligible for self-certification under § 24.6 reflects the OCC's view that investments targeted to low- and moderate-income individuals or areas necessarily primarily promote the public welfare. Other types of investments may primarily promote the public welfare also, but the OCC believes that some prior review of such investments is an appropriate means to ensure that they satisfy the criteria set forth in § 24.3. Accordingly, the OCC adopts the list of eligible activities proposed in § 24.6(a) of the NPRM with two modifications. The first modification limits self-certification to investments that benefit low- and moderate-income individuals or areas; and the second modification reflects the commenter's suggestion concerning limited partnerships investments.[4]

Notwithstanding the activities eligible for self-certification listed in § 24.6(a), § 24.6(b) of the NPRM provided that a bank may not self-certify investments that involve properties carried on the bank's books as ''other real estate owned'' (OREO properties) or that fund projects outside the states or metropolitan areas in which the bank's main office or branches are located. The latter limitation is similar to the limit on self-certification that appears in former part 24 but was revised in the NPRM to reflect that some national banks now have branches in more than one state. One commenter suggested that the final rule permit self-certification of investments in portfolio projects, such as regional funds that invest in affordable housing projects located in several states, where no more than 25 percent of the affordable housing projects are located outside the states or metropolitan areas served by the bank. The OCC agrees that a bank should not be discouraged from investing in innovative projects that primarily benefit the communities it serves because a small portion of the investment benefits other areas. Accordingly, under the final rule, a bank may not self-certify an investment where more than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank maintains its main office or branches. If a portion of a bank's investment funds projects in areas outside of those in which the bank maintains its main office or branches, the bank must certify under § 24.5(a)(3)(vii) that no more than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank maintains its main office or branches.

Examination, Records, and Remedial Action (§ 24.7)

The NPRM proposed replacing former § 24.21, which set forth the former rule's examination, records, and remedial action provisions, with proposed § 24.7 without substantive change. The OCC received no comments on this proposed revision, and accordingly adopts the proposed change.

Accounting for Public Welfare Investments (Current § 24.4(c))

Section 24.4(c) of the former rule provided that a bank's investments in CDCs and CD Projects generally could be recorded as ''other assets at cost.'' The former rule also set forth circumstances under which a bank would be required to consolidate its investments on a line-by-line basis or account for them under the equity method of accounting. The NPRM proposed eliminating this section as

[4] In response to another commenter, the OCC clarifies that permissible investments in a rural community in which a bank has its main office or branch may be self-certified.

unnecessary, because banks generally look to other sources for their accounting instructions. The OCC received no comments on this proposed removal, and accordingly adopts the proposed change. Banks should record their investments, as appropriate, pursuant to the instructions for Consolidated Reports of Condition and Income published by the Federal Financial Institutions Examination Council.

Policy Issue Regarding Dual Sources of Authority

In the past, the OCC has not used 12 U.S.C. 24(Eleventh), as implemented by part 24, to approve activities permissible under other provisions of the National Bank Act, 12 U.S.C. 1 *et seq*. This position was intended to prevent banks' activities from being subjected unnecessarily to part 24's limitation on the amount of capital a bank may commit to community development and public welfare investments. For example, a bank could make certain affordable housing loans under both 12 U.S.C. 24(Seventh) and 24(Eleventh). If the bank made such a loan under the authority of 24(Eleventh), the loan would be subject to a capital limitation that is stricter than the generally applicable lending limits. Because the bank would have used unnecessarily some of its limited part 24 authority to make a loan that is also permissible under 24(Seventh), the bank would be left with less capital to commit to investments that are permissible only under part 24. Therefore, the OCC would usually conclude that 24(Seventh) provided the authority for the loan. This position, however, does not reflect the OCC's general approach of allowing banks to decide how best to structure their investments.

The NPRM requested comment on whether the OCC should continue its policy of not using part 24 as a basis for approving activities otherwise permissible under the National Bank Act. One commenter opined that part 24 provides limited authority that should be restricted only to those activities motivated by concern for the public welfare, rather than regular business considerations. The OCC believes that part 24 affords banks the opportunity to implement activities that supplement and enhance otherwise permissible activities but may, in some cases, provide authority that overlaps with other authority under the National Bank Act. The OCC has decided that, where a choice is available, a bank will be permitted to choose whether an investment activity will be undertaken pursuant to authority under 24(Seventh) or 24(Eleventh). When a bank seeks to rely on 24(Eleventh), however, the OCC will advise the bank that the proposed investment is permissible under both authorities to ensure that the bank is aware of the full range of its legal investment opportunities and of the effect of the applicable investment limitations.

Derivation Table

This table directs readers to the provision(s) of the current regulation, if any, upon which the proposed provision is based.

Revised section	Original section	Comments
§ 24.1	§ 24.1	Modified.
§ 24.2(a)	§ 24.2(a)	Modified.
(b)	§ 24.2(m)	Substantial change.
(c)	§ 24.2(b)	Modified.
(d)	§ 24.2(e)	Modified.
(e)		Added.
(f)	§ 24.2 (g) ,(h)	Substantial change.
(g)	§ 24.2(k)	Modified.
(h)	§ 24.2(l)	Modified.
	§ 24.2(c)	Removed.
	§ 24.2(d)	Removed.
	§ 24.2(f)	Removed.
	§ 24.2(i)	Removed.
(i)	§ 24.2(a)	Modified.
	§ 24.2(j)	Removed.
§ 24.3	§ 24.4(a)	Substantial change.
§ 24.4	§ 24.4 (b), (d)	Modified.
	§ 24.4(c)	Removed.
	§ 24.4(e)	Removed.
§ 24.5(a)	§ 24.11(a)	Substantial change.
(b)	§ 24.11 (b), (d), (e)	Substantial change.
	§ 24.11(c)	Removed.
§ 24.6(a)	§ 24.13(b)	Substantial change.
(b)	§ 24.11(b)	Modified.
	§ 24.13(a)	Removed.
§ 24.7	§ 24.21	Modified.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule will reduce the regulatory burden on national banks, regardless of size, by replacing part 24's public welfare test with modified criteria for determining whether an investment promotes the public welfare, streamlining the self-certification and prior approval sections of the rule, and eliminating unnecessary provisions. Although beneficial, these changes will not have a material impact on affected banks.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The OCC has determined that this final rule will not result in expenditures by state, local and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

The collection of information requirements in this final rule are found in 12 CFR 24.5. This information is required for the public welfare investment self-certification and prior approval procedures. The likely respondents are national banks.

Estimated average annual burden hours per respondent: 1.05 hours.

Estimated number of respondents: 400.

Estimated total annual reporting burden: 418 hours.

Start-up costs to respondents: None.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends title 12, chapter I, part 24, of the Code of Federal Regulations as set forth below.

PART 24—COMMUNITY DEVELOPMENT CORPORATIONS, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

Sec.
24.1 Authority, purpose, and OMB control number.
24.2 Definitions.
24.3 Public welfare investments.
24.4 Investment limits.
24.5 Public welfare investment self-certification and prior approval procedures.
24.6 Activities eligible for self-certification.
24.7 Examination, records, and remedial action.

Authority: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

§ 24.1 Authority, purpose, and OMB control number.

(a) *Authority:* The Office of the Comptroller of the Currency (OCC) issues this part pursuant to its authority under 12 U.S.C. 24(Eleventh), 93a, and 481.

(b) *Purpose.* This part implements 12 U.S.C. 24(Eleventh), which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income areas or individuals, such as by providing housing, services, or jobs. It is the OCC's policy to encourage national banks to make investments described in § 24.3, consistent with safety and soundness. The OCC believes that national banks can promote the public welfare through a variety of investments, including those in community development corporations (CDCs) and community development projects (CD Projects) that develop affordable housing, foster revitalization or stabilization of low- and moderate-income areas or other areas targeted for redevelopment by local, state, tribal or Federal government, or provide equity or debt financing for small businesses that are located in such areas or that produce or retain permanent jobs for low- and moderate-income persons. This part provides:

(1) The standards that the OCC uses to determine whether an investment is designed primarily to promote the public welfare; and

(2) The procedures that apply to these investments.

(c) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557–0194.

§ 24.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Adequately capitalized* has the same meaning as adequately capitalized in 12 CFR 6.4.

(b) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set out in Appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under Appendix A to 12 CFR part 3, as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161.

(c) *Community development corporation (CDC)* means a corporation established by one or more insured financial institutions, or by insured financial institutions and other investors, to make one or more investments that meet the requirements of § 24.3.

(d) *Community development Project (CD Project)* means a project to make an investment that meets the requirements of § 24.3.

(e) *Eligible bank* means, for purposes of § 24.5, a national bank that:

(1) Is well capitalized;

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System;

(3) Has a Community Reinvestment Act (CRA) rating of ''Outstanding'' or ''Satisfactory''; and

(4) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (*see* 12 CFR part 6, subpart B) or, if subject to any such order, agreement or directive, is informed in writing by the OCC that the bank may be treated as an ''eligible bank'' for purposes of this part.

(f) *Low-income and moderate-income* have the same meanings as ''low-income'' and ''moderate-income'' in 12 CFR 25.12(n).

(g) *Significant risk to the deposit insurance fund* means a substantial probability that any Federal deposit insurance fund could suffer a loss.

(h) *Small business* means a business, including a minority-owned small business, that meets the qualifications for Small Business Administration Development Company or Small Business Investment Company loan programs in 13 CFR 121.301.

(i) *Well capitalized* has the same meaning as well capitalized in 12 CFR 6.4.

§ 24.3 Public welfare investments.

A national bank may make an investment under this part if:

(a) The investment primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal or Federal government (including Federal enterprise communities and Federal empowerment zones) by providing or supporting one or more of the following activities:

(1) Affordable housing, community services, or permanent jobs for low- and moderate-income individuals;

(2) Equity or debt financing for small businesses;

(3) Area revitalization or stabilization; or

(4) Other activities, services, or facilities that primarily promote the public welfare;

(b) The bank demonstrates that it is not reasonably practicable to obtain other private market financing for the proposed investment;

(c) The bank demonstrates the extent to which the investment benefits communities otherwise served by the bank; and

(d) The bank demonstrates non-bank community support for or participation

in the investment. Community support or participation may be demonstrated in a variety of ways, including but not limited to:

(1) In the case of an investment in a CD entity with a board of directors, representation on the board of directors by non-bank community representatives with expertise relevant to the proposed investment;

(2) Establishment of an advisory board for the bank's community development activities that includes non-bank community representatives with expertise relevant to the proposed investment;

(3) Formation of a formal business relationship with a community-based organization in connection with the proposed investment;

(4) Contractual agreements with community partners to provide services in connection with the proposed investment;

(5) Joint ventures with local small businesses in the proposed investment; and

(6) Financing for the proposed investment from the public sector or community development organizations.

§ 24.4 Investment limits.

(a) *Limit on aggregate outstanding investments.* A national bank's aggregate outstanding investments under this part may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines, by written approval of the bank's proposed investment(s), that a higher amount will pose no significant risk to the deposit insurance fund. In no case may a bank's aggregate outstanding investments under this part exceed 10 percent of its capital and surplus.

(b) *Limited liability.* A national bank may not make an investment under this part that would expose the bank to unlimited liability.

§ 24.5 Public welfare investment self-certification and prior approval procedures.

(a) *Self-certification of public welfare investments.* (1) Subject to § 24.4(a), an eligible bank may make an investment described in § 24.6(a) without prior notification to, or approval by, the OCC if the bank follows the self-certification procedures prescribed in this section.

(2) To self-certify an investment, an eligible bank shall submit, within 10 working days after it makes an investment, a letter of self-certification to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(3) The bank's letter of self-certification must include:

(i) The name of the CDC, CD Project, or other entity in which the bank has invested;

(ii) The date the investment was made;

(iii) The type of investment (equity or debt), the investment activity listed in § 24.6(a) that the investment supports, and a brief description of the particular investment;

(iv) The amount of the bank's total investment in the CDC, CD Project or other entity, and the bank's aggregate outstanding investments under this part, including commitments and the investment being self-certified;

(v) The percentage of the bank's capital and surplus represented by the bank's aggregate outstanding investments under this part, including commitments and the investment being self-certified;

(vi) A statement certifying compliance with the requirements of § 24.3 and § 24.4; and

(vii) If a portion of the investment funds projects outside of the areas in which the bank maintains its main office or branches, a statement certifying that no more than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank maintains its main office or branches.

(4) A national bank that is not an eligible bank but that is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the Community Development Division requesting authority to self-certify investments. The Community Development Division considers these requests on a case-by-case basis.

(b) *Investments requiring prior approval.* (1) If a national bank or its proposed investment does not meet the requirements for self-certification set forth in paragraph (a) of this section, the bank shall submit a proposal for an investment to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) The bank's investment proposal must include:

(i) The name of the CDC, CD Project, or other entity in which the bank intends to invest;

(ii) The date on which the bank intends to make the investment;

(iii) The type of investment (equity or debt), the investment activity listed in § 24.3(a) that the investment supports, and a description of the particular investment;

(iv) The amount of the bank's total investment in the CDC, CD Project or other entity, and the bank's aggregate outstanding investments under this part (including commitments and the investment being proposed);

(v) The percentage of the bank's capital and surplus represented by the bank's aggregate outstanding investments under this part (including commitments and the investment being proposed); and

(vi) A statement certifying compliance with the requirements of § 24.3 and § 24.4.

(3) In reviewing a proposal, the OCC considers the following factors and other available information:

(i) Whether the investment satisfies the requirements of § 24.3 and § 24.4;

(ii) Whether the investment is consistent with the safe and sound operation of the bank; and

(iii) Whether the investment is consistent with the requirements of this part and the OCC's policies.

(4) Unless otherwise notified in writing by the OCC, and subject to § 24.4(a), the proposed investment is deemed approved after 30 calendar days from the date on which the OCC receives the bank's investment proposal.

(5) The OCC, by notifying the bank, may extend its period for reviewing the investment proposal. If so notified, the bank may make the investment only with the OCC's written approval.

(6) The OCC may impose one or more conditions in connection with its approval of an investment under this part. All approvals are subject to the condition that a national bank must conduct the approved activity in a manner consistent with any published guidance issued by the OCC regarding the activity.

§ 24.6 Activities eligible for self-certification.

(a) *Eligible activities.* In accordance with the process described in § 24.5(a), a bank may self-certify the following investments without prior notice to, or approval by, the OCC:

(1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;

(2) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(3) Investments that provide credit counseling, job training, community

development research, and similar technical assistance services for non-profit community development organizations, low- and moderate-income individuals or areas, or small businesses located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(4) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(5) Investments as a limited partner, or as a partner in an entity that is itself a limited partner, in a project with a general partner that is, or is primarily owned and operated by, a 26 U.S.C. 501(c) (3) or (4) non-profit corporation and that qualifies for the Federal low-income housing tax credit;

(6) Investments in low- and moderate-income areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(7) Investments in a national bank that has been approved by the OCC as a national bank with a community development focus;

(8) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.21 for state member banks that are consistent with the requirements of § 24.3; and

(9) Investments of a type previously determined by the OCC to be permissible under this part.

(b) *Ineligible activities.* Notwithstanding the provisions of this section, a bank may not self-certify an investment if:

(1) The investment involves properties carried on the bank's books as ''other real estate owned'';

(2) More than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank maintains its main office or branches; or

(3) The OCC determines, in published guidance, that the investment is inappropriate for self-certification.

§ 24.7 Examination, records, and remedial action.

(a) *Examination.* National bank investments under this part are subject to the examination provisions of 12 U.S.C. 481.

(b) *Records.* Each national bank shall maintain in its files information adequate to demonstrate that it is in compliance with the requirements of this part.

(c) *Remedial action.* If the OCC finds that an investment under this part is in violation of law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to a Federal deposit insurance fund, the national bank shall take appropriate remedial action as determined by the OCC.

Dated: September 13, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–23986 Filed 9–20–96; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM96–17–000; Order No. 590]

Changes in Form No. 1 Instructions

Issued September 16, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is modifying the instructions for the filing of FERC Form No. 1, ''Annual report of Major electric utilities, licensees and others,'' to make them clearer and to make it easier to file the Form electronically.

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

FOR FURTHER INFORMATION CONTACT:

Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First St. N.E., Washington, D.C. 20426, (202) 208–2128

Robert J. Lynch (Technical Information), Office of the Chief Accountant, Federal Energy Regulatory Commission, 888 First St. N.E., Washington, D.C. 20426, (202) 219–3012.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street. NE., Washington, DC. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally, or 1–800–856–3920 if dialing long distance. CIPS is also available through the FedWorld System (by modem or Internet). To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street NE., Washington, DC. 20426.

Issued: September 16, 1996.

I. Introduction

On December 29, 1994, the Commission amended its regulations to provide for the electronic filing of FERC Form No. 1, ''Annual report of Major electric utilities, licensees and others'' (Form No. 1).[1] The Commission directed that, beginning with reporting year 1994 (for which reports were due on or before May 31, 1995),[2] parties would submit to the Commission a computer diskette with the Form No. 1 information on it, in addition to the required number of paper copies. The Commission concluded that the change would yield significant benefits, including more timely analysis and publication of data and reduced cost of data entry and retrieval. Aside from requiring electronic filing of Form No. 1, the Commission otherwise left Form No. 1 unchanged.

The Commission is now amending the instructions for filing Form No. 1 to eliminate ambiguity and to make it easier to file the form electronically.

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information under the final rule will remain unchanged for Form No. 1, since the only modifications are to the instructions for the filing of the form to make them clearer and to make it easier to file the form electronically.

[1] Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant, Order No. 574, 60 FR 1716 (Jan. 5, 1995), FERC Stats. & Regs. Regulations Preambles 1991–1996 ¶ 31,013 (1994) (*Electronic Filing I*), *reconsid. denied*, 70 FERC ¶ 61,330 (1995) (*Electronic Filing II*).

[2] *Electronic Filing II*, 70 FERC at 62,020.

The current annual reporting burden for the industry for the collection of information is estimated to be 235,000 hours. The industry burden is based on an estimate of 1,217 average hours on an annual basis for the 193 entities which complete a Form No. 1 filing. This estimate includes the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden can be sent to, the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 (Attention: Michael Miller, Information Services Division, (202) 208–1415), and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission); FAX: (202) 395–7285; telephone: (202) 395–3087.

III. Background

The Commission, in the exercise of its authority under the Federal Power Act (FPA), collects data pertaining to the electric utility industry in the United States.[3] One of the principal forms that the Commission uses to collect this information is Form No. 1, which some 193 electric utilities and licensees submit annually.[4] Form No. 1 consists of cover pages, four pages of general information and instructions, and 113 pages of schedules incorporating financial and operational information pertaining to the respondent companies. An independent certified public accountant must certify that certain information on the form conforms to the Commission's Uniform System of Accounts.[5]

The Commission has now gained experience from two reporting cycles under the new system. The Commission received numerous inquiries seeking clarification of certain of the instructions that were not compatible with the new electronic filing requirement. The Commission has determined that, in addition to clarifying these instructions, it also should revise certain others that have created ambiguity in prior reporting cycles.

The Commission is making these revisions in the Form No. 1 instructions in tandem with its continuing improvement of the Form No. 1 software. These changes to the Form No. 1 instructions will make it easier to field test, and eventually distribute, a new version of the software to each Form No. 1 respondent. A detailed description of the changes that the Commission is making in its Form No. 1 instructions follows. A revised set of Form No. 1 instructions appears in the Appendix.[6]

IV. Description of Changes to Form No. 1 Instructions

A. Overview of Instructions that the Commission is Modifying

Page No.	Topic	Instruction No.
102	Control Over Respondent.	2
103	Corporations Controlled By Respondent.	4
104	Officers	3
108	Important Changes During The Year.	12
115	Statement Of Income For The Year (Continued).	7
118	Statement of Retained Earnings For The Year.	8
120	Statement Of Cash Flows.	1
122	Notes To Financial Statements.	6
261	Reconciliation Of Reported Net Income With Taxable Income For Federal Income Taxes.	3
263	Taxes Accrued, Prepaid And Charged During Year (Continued).	8
350–351	Regulatory Commission Expenses.	2, 4 and column headings (d), (e), (i), (*l*).

B. Description of and Reason for Changes

Page 102, Instruction No. 2

1. *Change:* deleted.
2. *Reason:* Inconsistent with requirement to file data in a structured electronic format. Instruction called for *referencing* information submitted to the Securities and Exchange Commission (SEC) (*i.e.* the SEC's 10–K annual report), rather than providing the information on a diskette.

Page 103, Instruction No. 4

1. *Change:* deleted.
2. *Reason:* Inconsistent with requirement to file data in a structured electronic format. Instruction called for *referencing* information submitted to the SEC (*i.e.*, the SEC's 10–K annual report), rather than providing the information on a diskette.

Page 104, Instruction No. 3

1. *Change:* deleted.
2. *Reason:* Inconsistent with requirement to file data in a structured electronic format. Instruction called for *substituting* a copy of the information submitted to the SEC (*i.e.*, item 4 of Regulation S-K), instead of completing page 104.

Page 108, Instruction No. 12

1. *Change:* The Commission is changing the words ''attached to'' to ''included on'' this page.
2. *Reason:* The words ''attached to'' are inconsistent with the requirement to file data in a structured electronic format. Instruction provided for *attaching* a copy of the notes that appear in the respondent's annual report.

Page 115, Instruction No. 7

1. *Change:* The Commission is changing the words ''attached at'' to ''included on'' page 122.
2. *Reason:* The words ''attached at'' are inconsistent with the requirement to file the data in a structured electronic format. Instruction called for *attaching* at page 122 a copy of the notes appearing in the report to stockholders.

Page 118, Instruction No. 8

1. *Change:* The Commission is changing the words ''attach them at'' to ''include them on'' page 122.
2. *Reason:* The words ''attach them at'' are inconsistent with the requirement to file the data in a structured electronic format. Instruction called for *attaching* at page 122 a copy of the notes appearing in the report to stockholders.

Page 120, Instruction No. 1

1. *Change:* The Commission is changing the words ''attached to'' to ''included on'' page 122.
2. *Reason:* The words ''attached to'' are inconsistent with the requirement to file the data in a structured electronic format. Instruction called for *attaching* at page 122 a copy of the notes appearing in the annual stockholders report.

Page 122, Instruction No. 6

1. *Change:* The Commission is changing the words ''attached hereto'' to ''included herein.''
2. *Reason:* The words ''attached hereto'' are inconsistent with the

[3] 16 U.S.C. 825, 825c.

[4] *Electronic Filing I*, 60 FR at 1716–17; FERC Stats. & Regs. at 31,256.

[5] 18 CFR Part 101. *See Electronic Filing I*, 60 FR at 1717; FERC Stats. & Regs. at 31,256.

[6] Note: This Appendix will not appear in the Code of Federal Regulations.

requirement to file the data in a structured electronic format. Instruction called for *attaching* a copy of the notes that appear in the respondent's annual report to stockholders.

Page 261, Instruction No. 3

1. *Change:* The Commission is adding the following direction to this instruction: ''For electronic reporting purposes complete line 27 and provide the substitute page in the context of a footnote.''

2. *Reason:* As currently written, the instruction is inconsistent with the requirement to file the data in a structured electronic format.

Page 263, Instruction No. 8

1. *Change:* The Commission is deleting the current text of this instruction and is replacing that text with the following language: ''Report in columns (i) through (l) how the taxes were distributed. Report in column (i) only the amounts charged to Accounts 408.1 and 409.1 pertaining to electric operations. Report in column (l) the amounts charged to Accounts 408.1 and 409.1 pertaining to other utility departments and amounts charged to Accounts 408.2 and 409.2. Also show in column (l) the taxes charged to utility plant or other balance sheet accounts.''

2. *Reason:* The current instruction is confusing.

Pages 350–351, Instructions Nos. 2 and 4, and Column Headings for (d), (e), (i) and (l)

1. *Change:* The Commission is deleting the text of Instruction No. 2 and replacing the text of that instruction with the following language: ''Report in columns (b) and (c) only the current year's expenses that are not deferred and the current year's amortization of amounts deferred in previous years.''

The Commission is also revising the related column (d) heading to read: ''Total Expenses for Current Year (b)+(c)''

The Commission is deleting Instruction No. 4 and renumbering Instruction Nos. 5 and 6 as Nos. 4 and 5.

Finally, the Commission is revising the references to Account 186 that appear in the column headings for (e), (i) and (*l*) to read ''Account 182.3''.

2. *Reason:* Current Instruction No. 2 is confusing; current Instruction No. 4 is outdated; and, to effect the necessary changes, the Commission must renumber certain instructions and revise column headings accordingly.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[7] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[8] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural.[9] Because the changes in the Form No. 1 instructions that the Commission is making here are merely procedural and clarifying, and simply correct ambiguity in certain of the instructions, no environmental statement is necessary.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[10] requires rulemakings either to contain a description and analysis of the impact the rule will have on small entities or to certify that the rule will not have a substantial economic impact on a substantial number of small entities. Because most respondents do not fall within the definition of ''small entity,''[11] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Information Collection Statement

Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by an agency[12]. The information collection requirements in the final rule are contained in FERC Form No. 1.

Title: FERC Form No. 1 ''Annual Report of Major Electric Utilities, Licensees and Others''.

Action: Final Rule.

OMB Control No.: 1902–0021 (Respondents shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number).

Respondents: Business or other for profit entities.

Frequency of responses: Annually

Necessity of the information: The Commission uses the data collected to carry out its regulatory responsibilities. The Commission's Office of Chief Accountant uses the data in its audit program and continuous review of the financial condition of regulated companies. The Office of Electric Power Regulation (OEPR) uses the data in rate and other proceedings, and the Offices of Hydroelectric Licensing (OHL), Economic Policy (OEP) and General Counsel (OGC) use the data in investigations and programs relating to the administration of the Federal Power Act (FPA).

The FPA mandates the collection of data needed by the Commission to perform its regulatory responsibilities in, *inter alia*, the setting of just and reasonable rates. The Commission could be held in violation of the FPA if the data were not collected.

The final rule will not change the reporting requirements of FERC Form No. 1. This rule therefore is not subject to OMB review. The Commission is submitting a copy of the proposed rule to OMB for information purposes only. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for the Federal Energy Regulatory Commission]; FAX: (202) 395–7285; telephone: (202) 395–3087.

VIII. Administrative Findings and Effective Date

The Administrative Procedure Act (APA)[13] requires rulemakings to be published in the Federal Register. The APA also mandates that an opportunity for comments be provided when an agency promulgates regulations. However, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.[14]

The Commission finds that notice and comment are unnecessary for this rulemaking. As explained above, this

[7] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987) (*codified* at 18 CFR Part 380).

[8] 18 CFR 380.4.

[9] 18 CFR 380.4(a)(2)(ii).

[10] 5 U.S.C. 601–612.

[11] *See* 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[12] 5 CFR 1320.12.

[13] 5 U.S.C. 551–559.

[14] 5 U.S.C. 553(B); *e.g.*, Mid-Tex Electric Cooperative, Inc. v. FERC, 822 F.2d 1123 (D.C. Cir. 1987).

final rule is merely procedural, clarifying and ministerial in nature. The Commission is merely clarifying its Form No. 1 instructions and making them more compatible with the requirement of electronic filing. The Commission, therefore, finds good cause to make this rule effective October 23, 1996.

IX. Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[15] That reporting requirement does not apply to this final rule because it falls within a statutory exception for rules relating to procedural matters.[16]

List of Subjects

18 CFR Part 141

Electric power; Reporting and recordkeeping requirements.

[15] 5 U.S.C. 801 (1994).

[16] 5 U.S.C. 804(3)(B) (1994).

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends the instructions for Form No. 1 as appear in the Appendix.

Note: This Appendix will not be codified in the Code of Federal Regulations.

BILLING CODE 6717–01–P

APPENDIX

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, 19__

CONTROL OVER RESPONDENT

1. If any corporation, business trust, or similar organization or combination of such organizations jointly held control over the respondent at the end of the year, state name of controlling corporation or organization, manner in which control was held, and extent of control. If control was in a holding company organization, show the chain of ownership or control to the main parent company or organization. If control was held by a trustee(s), state name of trustee(s), name of beneficiary or beneficiaries for whom trust was maintained, and purpose of the trust.

Docket No. RM96-17-000

Appendix

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, 19__

CORPORATIONS CONTROLLED BY RESPONDENT

1. Report below the names of all corporations, business trusts, and similar organizations, controlled directly or indirectly by respondent at any time during the year. If control ceased prior to end of year, give particulars (details) in a footnote.
2. If control was by other means than a direct holding of voting rights, state in a footnote the manner in which control was held, naming any intermediaries involved.
3. If control was jointly held with one or more other interests, state the fact in a footnote and name the other interests.

DEFINITIONS

1. See the Uniform System of Accounts for a definition of of control.
2. Direct control is that which is exercised without interposition of an intermediary.
3. Indirect control is that which is exercised by the interposition of an intermediary which exercises direct control.
4. Joint control is that in which neither interest can effectively control or direct action without the consent of the other, as where the voting control is equally divided between two holders, or each party holds a veto power over the other. Joint control may exist by mutual agreement or understanding between two or more parties who together have control within the meaning of the definition of control in the Uniform System of Accounts, regardless of the relative voting rights of each party.

Line No.	Name of Company Controlled (a)	Kind of Business (b)	Percent Voting Stock Owned (c)	Footnote Ref. (d)
1				
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Name of Respondent	This Report is:	Date of Report (Mo, Da, Yr)	Year of Report
	(1) ☐ An Original (2) ☐ A Resubmission		Dec 31, 19__

OFFICERS

1. Report below the name title and salary for each executive officer whose salary is $50,000 or more. An "executive officer" of a respondent includes its president, secretary, treasurer, and vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), and any other person who performs similar policymaking functions.

2. If a change was made during the year in the incumbent of any position, show name and total remuneration of the previous incumbent, and the date the change in incumbency was made.

Line No.	Title (a)	Name of Officer (b)	Salary for Year (c)
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4			
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Name of Respondent	This Report is:	Date of Report (Mo, Da, Yr)	Year of Report
	(1) ☐ An Original (2) ☐ A Resubmission		Dec 31, 19__

IMPORTANT CHANGES DURING THE YEAR

Give particulars (details) concerning the matters indicated below. Make the statements explicit and precise, and number them in accordance with the inquiries. Each inquiry should be answered. Enter "none" "not applicable" or "NA" where applicable. If information which answers an inquiry is given elsewhere in the report, make a reference to the schedule in which it appears.

1. Changes in and important additions to franchise rights: Describe the actual consideration given therefor and state from whom the franchise rights were acquired. If acquired without the payment of consideration, state the fact.

2. Acquisition of ownership in other companies by reorganization, merger, or consolidation with other companies: Give names of companies involved, particulars concerning the transactions, name of the Commission authorizing the transaction, and reference to Commission authorization.

3. Purchase or sale of an operating unit or system: Give a brief description of the property, and of the transactions relating thereto, and reference to Commission authorization, if any was required. Give date journal entries called for by the Uniform System of Accounts were submitted to the Commission.

4. Important leaseholds (other than leaseholds for natural gas lands) that have been acquired or given, assigned or surrendered: Give effective dates, length of terms, names of parties, rents, and other conditions. State name ofCommission authorizing lease and give reference to such authorization.

5. Important extension or reduction of transmission or distribution system: State territory added or relinquished and date operations began or ceased and give reference to Commission authorization, if any was required. State also the approximate number of customers added or lost and approximate annual revenues of each class of service. Each natural gas company must also state major new continuing sources of gas made available to it from purchases, development, purchase contract or otherwise, giving location and approximate total gas volumes available, period of contracts, and other parties to any such arrangements etc.

6. Obligations incurred as a result of issuance of securities or assumption of liabilities of guarantees including issuance of short-term debt and commercial paper having a maturity of one year or less. Give reference to FERC or State Commission authorization, as appropriate, and the amount of obligation or guarantee.

7. Changes in articles of incorporation or amendments to charter: Explain the nature and purpose of such changes or amendments.

8. State the estimated annual effect and nature of any important wage scale changes during the year.

9. State briefly the status of any materially important legal proceedings pending at the end of the year, and the results of any such proceedings culminated during the year.

10. Describe briefly any materially important transactions of the respondent not disclosed elsewhere in this report in which any officer, director, security holder reported on page 106, voting trustee, associated company or known associate of any of these persons was a party or in which any such person had a material interest.

11. (Reserved)

12. If the important changes during the year relating to the respondent company appearing in the annual report to stockholders are applicable in every respect and furnish the data required by instructions 1 to 11 above, such notes may be included on this page.

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, 19__

STATEMENT OF INCOME FOR THE YEAR (Continued)

resulting from settlement of any rate proceeding affecting revenues received or costs incurred for power or gas purchases and a summary of the adjustments made to balance sheet, income and expense accounts.

7. If any notes appearing in the report to stockholders are applicable to this Statement of Income, such notes may be included on page 122.

8. Enter on page 122 a concise explanation of only those changes in accounting methods made during the year which had an effect on net income, including the basis of allocations and apportionments from those used in the preceding year. Also give the approximate dollar effect of such changes.

9. Explain in a footnote if the previous year's figures are different from that reported in prior reports.

10. If the columns are insufficient for reporting additional utility departments, supply the appropriate account titles, lines 2 to 23 and include the information on page 122 or in a supplemental statement.

ELECTRIC UTILITY		GAS UTILITY		OTHER UTILITY		
Current Year (e)	Previous Year (f)	Current Year (g)	Previous Year (h)	Current Year (i)	Previous Year (j)	Line No.
						1
						2
						3
						4
						5
						6
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Name of Respondent	This Report is:	Date of Report (Mo, Da, Yr)	Year of Report
	(1) ☐ An Original (2) ☐ A Resubmission		Dec 31, 19__

STATEMENT OF RETAINED EARNINGS FOR THE YEAR

1. Report all changes in appropriated retained earnings, unappropriated retained earnings, and unappropriated undistributed subsidiary earnings for the year.
2. Each credit and debit during the year should be identified as to the retained earnings account in which recorded (Accounts 433, 436-439 inclusive). Show the contra primary account affected in column (b).
3. State the purpose and amount of each reservation or appropriation of retained earnings.
4. List first account 439, Adjustments to Retained Earnings, reflecting adjustments to the opening balance of retained earnings. Follow by credit, then debit items in that order.
5. Show dividends for each class and series of capital stock.
6. Show separately the State and Federal income tax effect of items shown in account 439, Adjustments to Retained Earnings.
7. Explain in a footnote the basis for determining the amount reserved or appropriated. If such reservation or appropriation is to be recurrent, state the number and annual amounts to be reserved or appropriated as well as the totals eventually to be accumulated.
8. If any notes appearing in the report to stockholders are applicable to this statement, include them on page 122.

Line No.	Item (a)	Contra Primary Account Affected (b)	Amount (c)
	UNAPPROPRIATED RETAINED EARNINGS (Account 216)		
1	Balance - Beginning of Year		
2	Changes (Identify by prescribed retained earnings account)		
3	Adjustments to Retained Earnings (Account 439)		
4	Credit:		
5	Credit:		
6	Credit:		
7	Credit:		
8	Credit:		
9	TOTAL Credits to Retained Earnings (Acct. 439) (Total of Lines 4 thru 8)		
10	Debit:		
11	Debit:		
12	Debit:		
13	Debit:		
14	Debit:		
15	TOTAL Debits to Retained Earnings (Acct. 439) (Total of Lines 10 thru 14)		
16	Balance Transferred from Income (Account 433 less Account 418.1)		
17	Appropriations of Retained Earnings (Account 436)		
18			
19			
20			
21			
22	TOTAL Appropriations of Retained Earnings (Acct. 436) (Total of lines 18 thru 21)		
23	Dividends Declared - Preferred Stock (Account 437)		
24			
25			
26			
27			
28			
29	TOTAL Dividends Declared - Preferred Stock (Acct. 437) (Total of lines 24 thru 28)		
30	Dividends Declared - Common Stock (Account 438)		
31			
32			
33			
34			
35			
36	TOTAL Dividends Declared - Common Stock (Acct. 438) (Total of lines 31 thru 35)		
37	Transfers from Account 216.1, Unappropriated Undistributed Subsidiary Earnings		
38	Balance - End of Year (Total of lines 01, 09, 15, 16, 22, 29, 36 and 37)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, 19__

STATEMENT OF CASH FLOWS

1. If the notes to the cash flow statement in the respondents annual stockholders report are applicable to this statement, such notes should be included on page 122. Information about noncash investing and financing activities should be provided on page 122. Provide also on page 122 a reconciliation between "Cash and Cash Equivalents at End of Year" with related amounts on the balance sheet.

2. Under "Other" specify significant amounts and group others.

3. Operating Activities - Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show on page 122 amounts of interest paid (net of amounts capitalized) and income taxes paid.

Line No.	Description (See Instructions for Explanation of Codes) (a)	Amounts (b)
1	Net Cash Flow from Operating Activities:	
2	Net Income (Line 68(c) on page 117)	
3	Noncash Charges (Credits) to Income:	
4	Depreciation and Depletion	
5	Amortization of (Specify)	
6		
7		
8	Deferred Income Taxes (Net)	
9	Investment Tax Credit Adjustment (Net)	
10	Net (Increase) Decrease in Receivables	
11	Net (Increase) Decrease in Inventory	
12	Net (Increase) Decrease in Allowances Inventory	
13	Net (Increase) Decrease in Payables and Accrued Expenses	
14	Net (Increase) Decrease in Other Regulatory Assets	
15	Net (Increase) Decrease in Other Regulatory Liabilities	
16	(Less) Allowance for Other Funds Used During Construction	
17	(Less) Undistributed Earnings from Subsidiary Companies	
18	Other:	
19		
20		
21		
22	Net Cash Provided by (Used In) Operating Activities (Total of lines 2 thru 21)	
23		
24	Cash Flows from Investment Activities:	
25	Construction and Acquisition of Plant (Including land):	
26	Gross Additions to Utility Plant (less nuclear fuel)	
27	Gross Additions to Nuclear Fuel	
28	Gross Additions to Common Utility Plant	
29	Gross Additions to Nonutility Plant	
30	(Less) Allowance for Other Funds Used During Construction	
31	Other:	
32		
33		
34	Cash Flows for Plant (Total of lines 26 thru 33)	
35		
36	Acquisition of Other Noncurrent Assets (d)	
37	Proceeds from Disposal of Noncurrent Assets (d)	
38		
39	Investments in and Advances to Assoc. and Subsidiary Companies	
40	Contributions and Advances from Assoc. and Subsidiary Companies	
41	Disposition of Investments in (and Advances to)	
42	Associated and Subsidiary Companies	
43		
44	Purchase of Investment Securities (a)	
45	Proceeds from Sales of Investment Securities (a)	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, 19__

NOTES TO FINANCIAL STATEMENTS

1. Use the space below for important notes regarding the Balance Sheet, Statement of Income for the year, Statement of Retained Earnings for the year, and Statement of Cash Flows, or any account thereof. Classify the notes according to each basic statement, providing a subheading for each statement except where a note is applicable to more than one statement.

2. Furnish particulars (details) as to any significant contingent assets or liabilities existing at end of year, including a brief explanation of any action initiated by the Internal Revenue Service involving possible assessment of additional income taxes of material amount, or of a claim for refund of income taxes of a material amount initiated by the utility. Give also a brief explanation of dividends in arrears on cumulative preferred stock.

3. For Account 116, Utility Plant Adjustments, explain the origin of such amount, debits, and credits during the year, and plan of disposition contemplated, giving references to Commission orders or other authorizations respecting classification of amounts as plant adjustments and requirements as to disposition thereof.

4. Where Accounts 189, Unamortized Loss on Reacquired Debt, and 257, Unamortized Gain on Reacquired Debt, are not used, give an explanation, providing the rate treatment given these items. See General Instruction 17 of the Uniform System of Accounts.

5. Give a concise statement of any retained earnings restrictions and state the amount of retained earnings affected by such restrictions.

6. If the notes to financial statements relating to the respondent company appearing in the annual report to the stockholders are applicable and furnish the data required by instructions above and on pages 114-121, such notes may be included herein.

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, 19__

RECONCILIATION OF REPORTED NET INCOME WITH TAXABLE INCOME FOR FEDERAL INCOME TAXES

1. Report the reconciliation of reported net income for the year with taxable income used in computing Federal income tax accruals and show computation of such accruals. Include in the reconciliation, as far as practicable, the same detail as furnished on Schedule M-1 of the tax return for the year. Submit a reconciliation even though there is no taxable income for the year. Indicate clearly the nature of each reconciling amount.

2. If the utility is a member of a group which files a consolidated Federal tax return, reconcile reported net income with taxable net income as if a separate return were to be filed, indicating, however, intercompany amounts to be eliminated in such a consolidated return. State names of group members, tax assigned to each group member, and basis of allocation, assignment, or sharing of the consolidated tax among the group members.

3. A substitute page, designed to meet a particular need of a company, may be used as long as the data is consistent and meets the requirements of the above instructions. For electronic reporting purposes complete line 27 and provide the substitute page in the context of a footnote.

Line No.	Particulars (Details) (a)	Amount (b)
1	Net Income for the Year (Page 117)	
2	Reconciling Items for the Year	
3		
4	Taxable Income Not Reported on Books	
5		
6		
7		
8		
9	Deductions Reported on Books Not Deducted on Return	
10		
11		
12		
13		
14	Income Reported on Books Not Included in Return	
15		
16		
17		
18		
19	Deductions on Return Not Charged Against Book Income	
20		
21		
22		
23		
24		
25		
26		
27	Federal Tax Net Income	
28	Show Computation of Tax:	
29		
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, 19__

TAXES ACCRUED, PREPAID AND CHARGED DURING YEAR (Continued)

5. If any tax (exclude Federal and State income taxes) covers more than one year, show the required information separately for each tax year, identifying the year in column (a).

6. Enter all adjustments of the accrued and prepaid tax accounts in column (f) and explain each adjustment in a footnote. Designate debit adjustments by parentheses.

7. Do not include on this page entries with respect to deferred income taxes or taxes collected through payroll deductions or otherwise pending transmittal of such taxes to the taxing authority.

8. Report in columns (i) through (l) how the taxes were distributed. Report in column (i) only the amounts charged to Accounts 408.1 and 409.1 pertaining to electric operations. Report in column (l) the amounts charged to Accounts 408.1 and 409.1 pertaining to other utility departments and amounts charged to Accounts 408.2 and 409.2. Also show in column (l) the taxes charged to utility plant or other balance sheet accounts.

9. For any tax apportioned to more than one utility department or account, state in a footnote the basis (necessity) of apportioning such tax.

BALANCE AT END OF YEAR		DISTRIBUTION OF TAXES CHARGED				
(Taxes Accrued Account 236) (g)	Prepaid Taxes (Inc. in Account 165) (h)	Electric (Account 408.1, 409.1) (i)	Extraordinary Items (Account 409.3) (j)	Adjustment to Ret. Earnings (Account 439) (k)	Other (l)	Line No.
						1
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, 19__

REGULATORY COMMISSION EXPENSES

1. Report particulars (details) of regulatory Commission expenses incurred during the year (or incurred in previous years, if being amortized) relating to formal cases before a regulatory body, or cases in which such body was a party.

2. Report in columns (b) and (c) only the current year's expenses that are not deferred and the current year's amortization of amounts deferred in previous years.

Line No.	Description (Furnish name of regulatory commission or body, the docket or case number, and a description of the case.) (a)	Assessed by Regulatory Commission (b)	Expenses of Utility (c)	Total Expenses for Current Year (b)+(c) (d)	Deferred in Account 182.3 at Beginning of Year (e)
1					
2					
3					
4					
5					
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7					
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45					
46	TOTAL				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, 19__

REGULATORY COMMISSION EXPENSES (Continued)

3. Show in column (k) any expenses incurred in prior years which are being amortized. List in column (a) the period of amortization.
4. List in column (f), (g), and (h) expenses incurred during year which were charged currently to income, plant or other accounts.
5. Minor items (less than $25,000) may be grouped.

EXPENSES INCURRED DURING THE YEAR				AMORTIZED DURING YEAR			
CHARGED CURRENTLY TO							
Department (f)	Account No. (g)	Amount (h)	Deferred to Account 182.3 (i)	Contra Account (j)	Amount (k)	Deferred in Account 182.3 End of Year (l)	Line No.
							1
							2
							3
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[FR Doc. 96–24261 Filed 9–20–96; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 96–047]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between July 1, 1996 and September 18, 1996, which were not published in the Federal Register. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the Federal Register was not possible.

DATES: This document lists temporary Coast Guard regulations that became effective and were terminated between July 1, 1996 and September 18, 1996, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Stephen J. Darmody, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the Federal Register is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Noticers to Marines, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, Federal Register notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the Federal Register notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the Federal Register. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1996 and September 18, 1996, unless otherwise indicated.

Stephen J. Darmody,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Corpus Christi 96–009	Corpus Christi Ship Channel	Safety Zone	8/2/96
Guam 96–001	Cocos Island Reef, Guam	Safety Zone	3/7/96
Guam 96–002	Apra, Guam	Safety Zone	3/27/96
Guam 96–004	Sasanhaya East Harbor, Rota	Safety Zone	5/2/96
Guam 96–005	Rota	Safety Zone	5/2/96
Guam 96–008	Outer Apra Harbor, Guam	Safety Zone	7/31/96
Houston-Galveston 96–008	Houston, TX	Safety Zone	6/21/96
Houston-Galveston 96–009	Houston, TX	Safety Zone	7/4/96
Houston-Galveston 96–010	Houston, TX	Safety Zone	6/27/96
LA/Long Beach 96–013	San Pedro Bay, CA	Safety Zone	6/30/96
LA/Long Beach 96–013	San Pedro Bay, CA	Safety Zone	6/30/96
LA/Long Beach 96–014	Carpinteria, CA	Safety Zone	7/12/96
LA/Long Beach 96–015	San Pedro Bay, CA	Safety Zone	7/19/96
LA/Long Beach 96–016	San Pedro Bay, CA	Safety Zone	7/25/96
LA/Long Beach 96–020	Huntington Beach, CA	Safety Zone	9/6/96
Miami 96–047	Kew West, FL	Safety Zone	7/13/96
Mobile 96–20	Gulf of Mexico, AL	Safety Zone	7/13/96
Pittsburgh 96–002	Pittsburgh, PA	Security Zone	8/18/96
Port Arthur 96–08	Beaumont, TX	Safety Zone	7/5/96
San Diego Bay 96–003	San Diego, CA	Safety Zone	8/10/96
Savannah 96–042	Hilton Head Island, SC	Safety Zone	7/4/96
Savannah 96–043	Savannah River, Savannah, GA	Safety Zone	7/20/96
Western Alaska 95–001	Cook Inlet, AK	Safety Zone	7/25/96
Western Alaska 96–002	Cook Inlet, AK	Safety Zone	7/27/96
01–95–059	Guilford, CT	Safety Zone	7/5/96
01–95–063	Groton, CT	Safety Zone	7/6/96
01–96–008	Winter Harbor Lobster Boat Race, Winter Ha	Special Local	8/10/96

QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
01–96–015	New Bedford, MA	Special Local.	
01–96–069	Narragansett Bay, RI	Special Local	7/9/96
01–96–070	Upper New York Bay, NY and NJ	Safety Zone	7/15/96
01–96–071	Peekskill Bay, NY	Safety Zone	7/27/96
01–96–076	Danvers River, Salem, MA	Safety Zone	8/2/96
01–96–079	Newport, Jamestown, RI	Security Zone	7/18/96
01–96–080	Rockaway Park, NY	Safety Zone	8/6/96
01–96–087	Boston, MA	Safety Zone	9/6/96
01–96–088	COHASSET, MA	Safety Zone	8/17/96
01–96–098	Cape Code, MA	Safety and Sec	8/3/96
01–96–102	Boston, MA	Safety Zone	8/15/96
01–96–103	Providence, RI	Special Local	8/16/96
01–96–104	Queens, NY	Security Zone	8/18/96
01–96–116	Boston, MA	Safety Zone	9/11/96
02–96–008	Davenport, IA	Special Local	7/5/96
05–96–041	Delaware River, Philadelphia, PA	Special Local	7/7/96
05–96–046	Portsmouth, VA	Special Local	7/4/96
05–96–049	Chester, PA	Safety Zone	7/2/96
05–96–050	Delaware River, Westville, NJ	Safety Zone	7/1/96
05–96–051	Delaware River	Safety Zone	7/1/96
05–96–054	Delaware Bay, Delaware River	Safety Zone RE	7/7/96
05–96–055	James, Elizabeth, York River, VA	Safety Zone	7/12/96
05–96–057	Delaware River, Gibbstown, NJ	Safety Zone	7/17/96
05–96–058	Elizabeth River, VA	Safety Zone	7/16/96
05–96–059	Hampton Roads and Elizabeth River, VA	Safety Zone	7/24/96
05–96–060	Delaware River, Marcus Hook, PA	Safety Zone	7/23/96
05–96–061	Chesapeake Bay, MD	Safety Zone	7/27/96
05–96–062	Delaware Bay, Delaware River	Safety Zone	7/29/96
05–96–066	James River, VA	Safety Zone	8/5/96
05–96–075	Salem River, New Jersey	Safety Zone	9/2/96
05–96–076	Delaware River	Safety Zone	9/3/96
05–96–078	Hampton Roads, VA and vicinity	Safety Zone	9/5/96
05–96–080	James River, VA and vicinity	Safety Zone	9/7/96
08–96–016	Kanawha River, M. 46 to M. 47	Special Local	7/6/96
08–96–017	Mississippi River, M. 202.5 to M. 203.5	Special Local	7/3/96
08–96–018	Mississippi River, M. 518 to M. 519	Special Local	7/3/96
08–96–019	Mississippi River, M. 179.2 to M. 180	Special Local	7/4/96
08–96–020	Mississippi River, M. 634 to M. 635	Special Local	7/6/96
08–96–021	Arkansas River, M. 307.5 to M. 309.5	Special Local	7/4/96
08–96–022	Mississippi River, M. 383 to M. 384	Special Local	7/4/96
08–96–023	Ohio River, M. 943 to M. 944.3	Special Local	7/4/96
08–96–024	Ohio River, M. 934 to M. 935	Special Local	7/3/96
08–96–027	Cumberland River, M. 190 to M. 191	Special Local	7/4/96
08–96–028	Mississippi River, M. 748 to M. 755	Safety Zone	4/19/96
08–96–030	Ohio River, M. 934 to M. 935	Special Local	7/27/96
08–96–031	Illinois River, M. 179.5 to M. 180.5	Special Local	7/28/96
08–96–032	Missouri River, M. 68 to M. 69	Special Local	7/28/96
08–96–035	Mississippi River, M. 482 to M. 483	Special Local	7/25/96
08–96–036	Mississippi River, M. 790 to M. 792	Special Local	8/3/96
08–96–037	Ohio River MI. 221 to 222	Special Local	8/10/96
08–96–042	Tennessee River, M. 255.5 to M. 256.3	Special Local	7/4/96
08–96–043	Mississippi River, M. 813.6 to M. 815	Special Local	7/20/96
09–96–006	Seven Sisters Smoke Stacks, Detroit River	Safety Zone	8/10/96
09–96–008	Grand River, MI	Drawbridge	8/5/96
09–96–011	Maumee River	Security Zone	8/26/96
13–96–012	Kennewick, WA	Special Local	7/22/96
13–96–018	Kennewick, WA	Safety Zone	7/4/96
13–96–019	Portland, OR	Safety Zone	7/4/96
13–96–020	Portland, OR	Safety Zone	7/4/96
13–96–021	Richland, VA	Safety Zone	7/5/96
13–96–022	Astoria, OR	Safety Zone	7/4/96
13–96–023	Port Townsend, WA	Safety Zone	7/4/96
13–96–024	Seattle, WA	Special Local	8/1/96
13–96–025	Bellingham, WA	Safety Zone	7/14/96
13–96–026	Seattle, WA	Safety Zone	7/31/96
13–96–027	Astoria, OR	Safety Zone	8/10/96
13–96–029	Seattle, WA	Safety Zone	8/10/96
13–96–030	Portland, OR	Safety Zone	9/3/96
13–96–031	Benton, WA	Safety Zone	9/5/96
13–96–034	Benton, WA	Safety Zone	9/12/96

[FR Doc. 96–24356 Filed 9–20–96; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 93–2B]

Digital Audio Recording Devices and Media; Verification of Statements of Account

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The Copyright Office is extending the comment period in its consideration of interim regulations that provide for the verification of the information contained in digital audio recording technology (DART) Statements of Account filed with the Office.

DATES: The extended deadline for comments is October 16, 1996, and for reply comments is November 18, 1996.

ADDRESSES: If sent by mail, fifteen copies of written comments should be addressed to Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366. If by hand, fifteen copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–407, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Telephone: (202) 707–8380 or Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On June 18, 1996, the Copyright Office published interim regulations providing for the verification of the information contained in digital audio recording technology (DART) Statements of Account filed with the Office. 61 FR 30808 (June 18, 1996). To allow interested parties more time to submit comments, the Office is extending the comment period from September 16, 1996, to October 16, 1996, and the deadline for reply comments from October 16, 1996, to November 16, 1996.

Dated: September 18, 1996.

Marilyn J. Kretsinger,

Acting General Counsel.

[FR Doc. 96–24357 Filed 9–20–96; 8:45 am]

BILLING CODE 1410–30–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5610–4]

Minor Amendments to Inspection/Maintenance Program Requirements

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This rule changes a provision of the federal vehicle inspection and maintenance (I/M) rules relating to motorist compliance enforcement mechanisms for pre-existing programs. The current rule limits the use of pre-existing enforcement mechanisms, other than denial of vehicle registration, to those geographic areas previously subject to the I/M program. This rule change allows states to employ such effective pre-existing enforcement mechanisms as sticker enforcement in any area in the state adopting an I/M program. This amendment is consistent with the relevant requirements of the Clean Air Act. These changes will not result in any change in health and environmental benefits.

DATES: This rule will take effect November 22, 1996 unless EPA receives adverse comments on a parallel proposal of this action, published elsewhere in this Federal Register, by October 23, 1996. Should EPA receive such comments, EPA will publish a subsequent document in the Federal Register withdrawing this direct final rule prior to the effective date. Anyone wishing to submit comments on the parallel proposal should do so at this time.

ADDRESSES: Materials relevant to this rulemaking are contained in the Public Docket No. A–91–75. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 5:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material. Electronic copies of the preamble and the regulatory text of this rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS) and the Office of Mobile Sources' World Wide Web cite, http://ww.epa.gov/OMSWWW/.

FOR FURTHER INFORMATION CONTACT: Leila Cook, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 741–7820.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by the minor amendment to the I/M rule are those which adopt, approve, or fund I/M programs. Regulated categories and entities include:

Category	Examples of regulated entities
Local government.	Local air quality agencies.
State government.	State air quality agencies responsible for I/M programs.
Federal government	EPA.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware that could potentially be regulated by this I/M amendment. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria of 40 CFR 51.361 of the I/M rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the Federal Register on November 5, 1992 (40 CFR part 51, subpart S) rules relating to motor vehicle inspection and maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). EPA here amends those rules to broaden the geographic area in which pre-existing enforcement mechanisms can be employed.

Section 182(c)(3) of the Act establishes the statutory requirements for enhanced I/M programs. Subsection (c)(3)(C)(iv) requires the use of vehicle registration denial enforcement mechanisms except in certain cases. The statute allows the use of alternative enforcement mechanisms that are demonstrated to be more effective than vehicle registration denial for any program in operation before enactment of the 1990 amendments of the Act.

In the 1992 I/M rules, EPA interpreted this statutory requirement to allow the use of pre-existing alternative enforcement mechanisms only in the same geographic area where the prior program had been implemented using that alternative 40 CFR 51.361. That regulation did not provide for the use of alternative enforcement mechanisms in

any areas within a state that had not previously had an I/M program, even where an effective alternative enforcement mechanism was in place elsewhere in the state. In addition, the 1992 I/M rule required pre-existing alternative enforcement mechanisms to have been approved into the SIP.

Based on experience implementing the I/M rule, EPA now believes that the provisions limiting the geographic scope of pre-existing enforcement mechanisms should be altered. EPA is amending 40 CFR 51.361 to allow, anywhere within a state, the use of more effective pre-existing enforcement mechanisms that the state had previously used in only some portion of the state. In states where a pre-existing enforcement mechanism can be demonstrated to be more effective than registration denial, it would be incongruous to allow the use of that mechanism only in those areas that had previously employed the mechanism, but require areas within the state newly implementing I/M to use a registration denial system that had already been demonstrated to be less effective within the state.

EPA believes that the amendment to section 51.361 is consistent with the Act. The statute does not impose a geographic limitation on the scope of applicability of pre-existing enforcement mechanisms. The statute merely requires that the I/M program have been in place prior to the 1990 amendments to the Act, and that the enforcement mechanism be demonstrated to be more effective than registration denial. EPA believes that where this demonstration can be made, expansion of the program, including the pre-existing enforcement mechanism, to other areas within the state is appropriate and consistent with the statute.

Further, EPA is removing the requirement in § 51.361 that pre-existing enforcement mechanisms have been approved into the SIP. The statute requires only that such mechanism have been in operation prior to the 1990 amendments to the Act, and says nothing about SIP approval. Where a state can demonstrate that its pre-existing enforcement mechanism is more effective than registration denial, EPA believes it would be inconsistent with the statute to require use of the less effective registration denial system merely because the program previously in operation had not been approved into the SIP.

Administrative Requirements

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. A small government jurisdiction is defined as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. This certification is based on the fact that the I/M areas impacted by this rulemaking do not meet the definition of a small government jurisdiction, that is, governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. This rule affects only the enforcement mechanism states may include in their I/M programs. Furthermore, the impact created by this action does not increase the pre-existing burden which this proposal seeks to amend.

Unfunded Mandates Act

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

To the extent that the requirements in this action would impose any mandate at all as defined in Section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this rule is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens from those resulting from the currently existing I/M rule.

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, 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. The rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Executive Order 12866

It has been determined that this amendment to the I/M rule is not a significant regulatory action under the terms of Executive Order 12866 and has been waived from Office of Management and Budget (OMB) review.

Reporting and Recordkeeping Requirements

There are no information requirements in this final rule which requires the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 et seq.

Effective Date

This rule will take effect on November 22, 1996, unless EPA receives adverse comment on a parallel document proposing these same changes published elsewhere in this Federal Register. EPA is using the direct final rulemaking procedure in this case because EPA believes that these amendments are noncontroversial and does not anticipate receiving any adverse comment. Should EPA receive any such comments, EPA will publish a subsequent document in the Federal Register withdrawing this direct final rule prior to the effective date. EPA will then publish another final rule responding to the comments received and taking final action on the parallel proposal. Anyone wishing to comment on the parallel proposal should do so at this time.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 10, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 51 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 51.361 is amended by revising the introductory text and paragraph (b)(1)(i) to read as follows:

§ 51.361 Motorist compliance enforcement.

Compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use an existing alternative if it demonstrates that the alternative has been more effective than registration denial. An enforcement mechanism may be considered an ''existing alternative'' only in states that, for some area in the state, had an I/M program with that mechanism in operation prior to passage of the 1990 Amendments to the Act. A basic I/M area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. Two other types of enforcement programs may qualify for enhanced I/M programs if demonstrated to have been more effective than enforcement of the registration requirement in the past: Sticker-based enforcement programs and computer-matching programs. States that did not adopt an I/M program for any area of the state before November 15, 1990, may not use an enforcement alternative in connection with an enhanced I/M program required to be adopted after that date.

* * * * *

(b) * * *

(1) * * *

(i) For enhanced I/M programs, the area in question shall have had an operating I/M program using the alternative mechanism prior to enactment of the Clean Air Act Amendments of 1990. While modifications to improve compliance may be made to the program that was in effect at the time of enactment, the expected change in effectiveness cannot be considered in determining acceptability;

* * * * *

[FR Doc. 96–23652 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[CO–001–0001a; FRL–5606–4]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Denver Nonattainment Area PM_{10} Contingency Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the state implementation plan (SIP) revision submitted by the State of Colorado on November 17, 1995, to satisfy the Federal Clean Air Act requirement to submit contingency measures for the Denver moderate PM_{10} (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers) nonattainment area. EPA is approving this SIP revision because it is consistent with the PM_{10} contingency measure requirements of the Clean Air Act, as amended (Act).

DATES: This action is effective on December 23, 1996 unless adverse comments are received by November 22, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be addressed to Richard R. Long, Director Air Program, EPA Region VIII, at the address listed below. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and Colorado Department of Public Health and Environment Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530. The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, 8P2–A, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6434.

SUPPLEMENTARY INFORMATION:

I. Background of Denver PM_{10} SIP

The Denver, Colorado area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Act, upon enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (November 6, 1991); 40 CFR 81.306 (specifying designations for Colorado).

Those States containing initial moderate PM_{10} nonattainment areas were required to submit several provisions by November 15, 1991. These provisions, including an attainment demonstration (or demonstration that timely attainment is impracticable), are described in EPA's proposed rulemaking for the Denver moderate PM_{10} nonattainment area SIP (see 58 FR 66326, December 20, 1993). The Denver PM_{10} control measures targeted re-entrained road dust, residential wood burning, stationary sources and mobile sources for reductions in PM_{10} emissions to demonstrate attainment of the PM_{10} NAAQS. See the December 20, 1993, notice of proposed rulemaking and associated Technical Support Document (TSD) for further details.

Such States were also required to submit contingency measures by November 15, 1993 (see 57 FR 13543). The Governor of Colorado initially submitted a contingency measure SIP for Denver on December 9, 1993. On March 30, 1994, the EPA notified the State that it had determined that the wintertime secondary particulate concentration contained in the June 7, 1993, Denver PM_{10} SIP submittal was underestimated by 5.4 $\mu g/m^3$. Based upon that finding, the contingency measures contained in the December 9, 1993, submittal were used to provide further emission reductions for a revised attainment demonstration addressing the additional secondary impacts. The State then undertook a process to develop new contingency measures. The Governor submitted the new measures on November 17, 1995, for the Denver nonattainment area.

II. This Action

A. Analysis Requirements for State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA [see Section 110(a)(2) and 110(l) of the Act]. EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) of the Act, 57 FR 13565, and EPA's completeness criteria for SIP submittals in 40 CFR part 51, appendix V].

To entertain public comment, the State of Colorado's Air Quality Control Commission (AQCC), after providing adequate notice, held a public hearing on March 16, 1995, to consider the Denver PM_{10} contingency measures.

Following the hearing, the AQCC adopted revisions to Colorado Regulation No. 16 as the Denver PM_{10} contingency measures. The Contingency Measure SIP revision was formally submitted to EPA by the Governor for approval on November 17, 1995.

The SIP revision was reviewed by EPA to determine completeness in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter dated March 14, 1996, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the processing of the SIP submittal.

2. PM_{10} Contingency Measures

The Clean Air Act requires that States containing PM_{10} nonattainment areas adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make RFP or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13510–13512 and 13543–13544. Pursuant to section 172(b), the Administrator established a schedule providing that states containing initial moderate PM_{10} nonattainment areas shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13543.)

The General Preamble further explains that contingency measures for PM_{10} should consist of other available control measures, beyond those necessary to meet the core moderate area control requirement to implement reasonably available control measures (see sections 172(c)(1) and 189(a)(1)(C) of the Act). Based on the statutory structure, EPA believes that contingency measures must, at a minimum, provide for continued progress toward the attainment goal during the interim period between the determination that the SIP has failed to achieve RFP/provide for timely attainment of the NAAQS and the additional formal air quality planning following the determination (57 FR 13511).

Section 172(c)(9) of the Act specifies that contingency measures shall ''take effect * * * without further action by the State or the [EPA] Administrator.'' EPA has interpreted this requirement (in the General Preamble at 57 FR 13512) to mean that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. In general, EPA expects all actions needed to effect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure to attain the standard or make RFP.

EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures can be implemented. However, States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking action such as public hearing or legislative review.

The Denver PM_{10} Contingency Measure SIP contains the following control measure—Improved Street Sweeping Technology. The control measure is found in Colorado Regulation No. 16, Street Sanding Emissions and provides that beginning November 1 of the first winter season after the determination and notification that the Denver PM_{10} nonattainment area has failed to attain the PM_{10} NAAQS or to make RFP, the contingency measure will be implemented.

Below is a detailed description of the contingency measure adopted for the Denver moderate PM_{10} nonattainment area:

a. *Improved Street Sweeping Technology Contingency Measure.* The Denver PM_{10} Contingency Measure SIP requires that any entity responsible for applying street sanding material within the Denver Central Business District (CBD), defined as the area bounded by Colfax Avenue, Speer Boulevard, Wynkoop Street, 20th Street and Broadway, shall clean all streets in the CBD using vacuum sweepers or a more effective technology within four days of each sanding episode, or as soon as weather permits. The requirements are found in revisions to Regulation No. 16, Street Sanding Emissions.

3. Effectiveness of the Contingency Measure

Information provided in the SIP submittal indicates that implementation of the contingency measure would result in an additional 15 $\mu g/m^3$ reduction of PM_{10} at the highest receptor in downtown Denver. This reduction equates to an additional 50% reduction in emissions over that demonstrated for the controls in the Denver moderate area SIP demonstration. This reduction exceeds the 25% emissions reduction which EPA expects from contingency measures as discussed in the General Preamble.

EPA believes this contingency measure is approvable. The control measures implemented in the PM_{10} SIP are projected to achieve more emissions reductions than needed to demonstrate attainment of the PM_{10} NAAQS, as indicated by the State's predicted 24-hour attainment concentration of 147.8 $\mu g/m^3$. Furthermore, the predicted 24-hour ambient concentration resulting if the contingency measure is implemented is 132.8 $\mu g/m^3$. Since the 24-hour PM_{10} NAAQS is 150 $\mu g/m^3$, this established safety margin further supports the reasonableness of this contingency measure.

4. Early Implementation

Section IV. B. of Colorado Regulation No. 16 sets out its early implementation policy as follows: Those parties subject to the contingency measure requirements could implement the measures at any time prior to EPA's determination that the area failed to attain the PM_{10} NAAQS or make RFP. Early implementation of these measures will not result in the requirement to implement additional contingency measures if the area eventually is determined to fail to attain the NAAQS or make RFP. If Denver were reclassified to a serious nonattainment area, additional control measures, including best available control measures and ''serious area'' contingency measures, would be necessary.

5. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP [see section 110(a)(2)(C)].

EPA's review of the November 17, 1995, PM_{10} Contingency Measure Plan has revealed that the State has adequate authority to enforce state air regulations against local entities, and enforce local air pollution requirements when local entities fail to do so. In addition, the State has authority to implement and enforce all emissions limitations and control measures adopted by the AQCC. In summary, EPA believes that Colorado has adequate enforcement capabilities to ensure compliance with the Denver contingency measure SIP. For further information, see the TSD prepared for this document.

III. Final Action

EPA is approving the PM_{10} contingency measure plan submitted for

the Denver moderate PM_{10} nonattainment area by the Governor of Colorado on November 17, 1995. This submittal adequately addresses the PM_{10} contingency measure requirements for Denver.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 Federal Register (59 FR 24054), this action will be effective December 23, 1996 unless, by November 22, 1996, adverse or critical comments are received.

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

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

IV. Executive Order

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

V. Regulatory Flexibility

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

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

VI. Unfunded Mandates

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

EPA has also determined that this promulgated action does not include a Federal 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

VII. 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, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VIII. Petition for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: August 27, 1996.

Patricia D. Hull,

Acting Regional Administrator.

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 G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(74) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(74) The Governor of Colorado submitted PM_{10} contingency measures for Denver, Colorado in a letter dated November 17, 1995.

(i) Incorporation by reference.

(A) Section IV. of Regulation No. 16, Street Sanding Emissions, adopted March 16, 1995, effective May 30, 1995.

[FR Doc. 96–24053 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–58–1–7256a; FRL–5557–8]

State of Texas; Approval of State Implementation Plan (SIP) Addressing the Sulfur Dioxide Emission Limit; Site-Specific Revision to the SIP for the Aluminum Company of America (ALCOA) Facility in Rockdale, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document announces the EPA's decision to approve a September 20, 1995, request from the State of Texas for a site-specific revision to the Texas sulfur dioxide (SO_2) SIP. The revision amends the SO_2 emission limitations applicable to the ALCOA facility in Milam County, Texas. In this action, the EPA is approving Texas' SIP revision allowing an increase in lignite fuel emissions of SO_2 from 3.0 pounds per million British thermal units (lb/MMBtu) to 4.0 lb/MMBtu. The SIP revision also includes new requirements for limits on the sulfur content of the petroleum coke used at the ALCOA facility and an increased stack height to ''Good Engineering Practices'' (GEP) as defined in 40 CFR 51.100 (ii). Texas has modeled these changes demonstrating that with the revisions the National Ambient Air Quality Standards (NAAQS) for SO_2 will remain protected.

DATES: This action is effective on November 22, 1996, unless adverse comments are received by October 23, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733.

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

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, P.O. Box 13087, Austin, TX 78711–3087.

Anyone wishing to review this petition at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Petra Sanchez, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6686.

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 1972 the EPA approved the original Texas SIP submission allowing for 3.0 lbs/MMBtu SO_2 emissions from solid fossil fuel-fired steam generators at the ALCOA plant. In 1979, ALCOA petitioned the Texas Air Control Board (TACB), now the Texas Natural Resource Conservation Commission (TNRCC), to allow relaxed SO_2 emission limitations for its power plant units.

The 1979 relaxation increased the allowable SO_2 limit to 5.0 lb/MMBtu, and was published in the *Texas Register* on July 6, 1979. After a public hearing conducted by the TACB on November 13, 1979, ALCOA modified its original petition and agreed to gradually lower the SO_2 emission limit from 5.0 lb/MMBtu SO_2 to 4.5 lb/MMBtu in 1981, and eventually to 4.0 lb/MMBtu after January 1, 1982. The TACB adopted this phased-in schedule on December 14, 1979, thus, lowering the requirement to 4.0 lb/MMBtu, as it remains today in the Texas regulations (see TAC § 112.8). However, the increase in allowable SO_2 limits was not officially revised and submitted to the EPA for approval as a SIP revision. Also in 1979, a new 545 MW power plant (Sandow Four) was built, doubling the fuel capacity from 2.1 million to 5.6 million tons of lignite per year. Sandow Four is owned by TU Electric Company and is under a contractual agreement with ALCOA to supply most of its power to ALCOA's operations. Therefore, Sandow Four Unit is not part of this SIP action but must meet more stringent emissions limitations. Sandow Four has a Prevention of Significant Deterioration (PSD) permit and is under New Source Performance Standards (NSPS) as well thus, BACT (Best Available Control Technology) applies. Under NSPS, Sandow Four is subject to a limitation of 1.2 lb/MMBtu SO_2 emissions in accordance with 40 CFR 60, Subpart D.

SIP Violation

On May 5, 1981, the EPA issued a Notice of Violation to ALCOA for exceeding the 3.0 lb/MMBtu SO_2 limit in the approved 1972 SIP. Without an approved SIP revision, ALCOA should have complied with the 3.0 lb/MMBtu limit under federal law rather than the higher state limit. The SIP revision provided by Texas includes information on the ALCOA facilities (i.e., Sandow One, Two, and Three) to ensure that a sulfur limit relaxation for those units will result in acceptable levels of SO_2 concentrations and to ensure continued attainment of the SO_2 National Ambient Air Quality Standards. To support the proposal, ALCOA submitted technical feasibility studies and economic evaluations, supported by ambient monitoring data and dispersion modeling. Compliance with the NAAQS and Prevention of Significant Deterioration (PSD) increments for SO_2 emission levels were supported through modeling procedures. The final submittal from the State contained limits on the use of sulfur-bearing fuels for the three units to prevent potential violations of the SO_2 NAAQS. A public hearing announcement was published on May 11, 1995, and a hearing was held on June 14, 1995, in Rockdale, Texas. No adverse comments were received. Comments were generally supportive of the action. The EPA found the SIP revision to be administratively complete in a letter dated November 28, 1995. For further details on the SIP submittal, please reference the Technical Support Document on file.

Good Engineering Practice and Stack Height Increase at Sandow Three

In June of 1995, ALCOA completed construction of a new stack for Sandow Three to increase the height of the emission point from 81 to 161 meters. The increase in height helped avoid the down-washing effect caused by the presence of large nearby structures. However, another effect of increasing stack height is to disperse emissions over a larger area, resulting in lower ambient concentrations without a true emissions reduction in grams per second. To limit over-crediting, the EPA federal regulations which define ''Good Engineering Practices'' (GEP) for the stack height, were evaluated to ensure that emissions do not result in excessive concentrations due to atmospheric downwash, or wakes created by terrain or structures in the vicinity of a source. Requirements, promulgated under 40 CFR Part 51, regulate stack height ''credits'' instead of actual stack height.

A GEP stack is defined under 40 CFR 51.100 (ii) by a formula that relates stack height to the dimensions of nearby structures, thus restricting stack increases to the modeling height necessary to avoid over-crediting by dilution. It also specifies certain site-specific demonstrations that are required to justify increases of an

existing stack to GEP formula height. The EPA interpretation of this rule (stated in a July 29, 1992 memo from the EPA's Office of Air Quality Planning and Standards to the EPA Directors) waives the requirement for a site-specific demonstration if a new structure has been built since the construction of the original stack. Thus, the siting of a new nearby structure removes a presumption that the original stack height is the GEP height, since the new structure may create downwash effects that were not anticipated in the original stack design. In ALCOA's case, the stack for Sandow Three was built in the early 1950's and Sandow Four was built in the late 1970's on adjacent property. The presence of the Sandow Four structure created new downwash effects. Therefore, the stack height increase is allowed by the EPA's stack height regulations, as long as it is within the allowable height as defined by 40 CFR 51.100(ii).

Dispersion Modeling Analysis

Dispersion modeling was used to demonstrate that ambient SO_2 concentrations are predicted to be below the NAAQS and allowable Prevention of Significant Deterioration (PSD) increments. Dispersion modeling integrates historical meteorological data and continuous industrial emissions to predict whether the population outside of a facility's property could be exposed to SO_2 levels above applicable health-based standards.

Alcoa hired Earth Tech/Sigma Research to conduct the modeling analyses to demonstrate that the ALCOA aluminum reduction facility and power plant was in compliance with the NAAQS. The PSD increments modeling was also performed to determine whether an incremental increase in SO_2 emissions from three to four pounds per MMBtu heat input at Units one, two, and three of the Sandow Power Plant would cause any violations.

The Industrial Source Complex—Short Term (ISCST2) model was used to model the Sandow power plant point sources along with 132 non-ALCOA background sources. The Buoyant Line and Point (BLP) Source model was used to model all of the line and scrubber stacks for the aluminum reduction facilities. The meteorological data used in the analyses were obtained from the Austin surface station and the Stephenville upper air station. The modeling was conducted in accordance to EPA's *Guideline on Air Quality Models* and were generally consistent with the EPA's regulatory recommendations.

NAAQS Modeling Analysis

The NAAQS analyses was performed in three phases. Results of the ISCST2 model and BLP dispersion modeling runs were summed up to provide ambient concentrations on an hourly basis for each receptor. Ambient concentrations were then compared with the primary and secondary NAAQS. The NAAQS limits are:

NATIONAL SO_2 STANDARDS

NAAQS	Micrograms per cubic meter (ug/m^3)
Primary annual SO_2	80
Primary 24-hour	365
Secondary 3-hour	1,300

To demonstrate compliance with the SO_2 NAAQS, four alternatives were used (based on smelter production levels and sulfur content in the anodes). As discussed in the Technical Support Document, the modeling runs predicted no violations of the applicable NAAQS.

The predicted concentrations for the annual average and the highest-second-high (H2H) concentrations for three-hour and 24-hour concentrations were below the SO_2 NAAQS for all years evaluated. The maximum annual concentrations for seven and eight lines scenarios are 76.83 ug/m^3 and 76.90 ug/m^3, respectively. Both occur at 684900 easting and 3389100 northing, approximately six kilometers north of the center of the ALCOA Rockdale facility. Meanwhile, the maximum H2H 24-hour concentration which occurs with the 2.6 percent sulfur content eight-line scenario is 355.29 ug/m^3 at 683783 easting and 3381889 northing. The maximum H2H three-hour concentration which occurs with the 3.0 percent sulfur content seven-line operating scenario is 1025.59 ug/m^3 at 682500 easting and 3382000 northing.

PSD Modeling Analysis

In addition to the NAAQS evaluations, the EPA requires an analysis to ensure that incremental increases of SO_2 due to a SIP relaxation will not cause a violation of the PSD increments. Milam County is classified as a Class II area for the purpose of establishing its allowable PSD increments.

There are no Class III areas in Texas. Numerical increments for SO_2 are defined below as the maximum increase above baseline, ambient concentrations.

CLASS II PSD INCREMENT STANDARDS FOR SO_2

PSD increment	ug/m^3
Annual SO_2 average	20
24-hour SO_2 average	91
3-hour SO_2 average	512

The PSD modeling analysis was also performed in three phases. For the PSD analysis, the main ALCOA increment-consuming sources are Sandow One, Two, and Three. These sources were modeled with ISCST2 using a 1.0 lb/MMBtu emission rate increase, representing the proposed increase in allowable SO_2 emission from 3.0 to 4.0 lb/MMBtu. Sandow Four was also included in the modeling because it too consumes PSD increment. The modeling predicted some exceedances of allowable PSD increments in an area about thirty kilometers to the southwest of the ALCOA facility. The predicted exceedances however, occurred inside the private property owned by the Acme Brick Company.

Closure of FM 1786 and Construction of Alternate Route

The TNRCC modeling staff predicted excesses of the NAAQS on a public roadway, Farm-to-Market Road 1786 (FM 1786), which was originally built as an entrance into the plant. ALCOA confirmed these possible impacts in their preliminary modeling efforts. After the public hearing, ALCOA and Milam County agreed to provide an alternate route as part of the county road system, resolving potential citizen complaints. ALCOA eventually acquired a 2.4-mile section of FM 1786 and privatized the road to limit its public access. On November 23, 1994, the Governor of Texas signed the deed transferring this section of roadway to ALCOA. With the closure of the former FM 1786, which is the entrance to the Rockdale Operations Facility, measures to restrict public access are to be taken. A gate has been installed and security guards patrol for unauthorized entry.

Monitoring

ALCOA is currently operating a monitoring network with two monitors collecting data on SO_2 concentrations, fluoride, wind speed, and wind direction. The Agreed Order requires ALCOA to continue providing ambient SO_2 and meteorological monitors installed and operated at the TNRCC approved sites in accordance with the Quality Assurance Project Plan (QAPP) to ensure that the NAAQS are protected. The QAPP was submitted to the TNRCC for approval and was approved on June

13, 1995. The TNRCC assumes all responsibility for ensuring quality data collection, analysis, calibration, and reporting requirements from ALCOA will protect the NAAQS. Monitoring reports submitted to the TNRCC currently show no exceedances of the NAAQS.

Enforceability

In order to protect the annual NAAQS, an annual limit of 3.1 million MW-hours of power generation from Sandow One, Two and Three is imposed on the facility. This limit was used to calculate the annual average for all four operating scenarios modeled. The Agreed Order adopted by TNRCC and ALCOA ensure the annual limits will be enforced and become federally enforceable through this SIP action. Within sixty days after adoption of the Agreed Order by the TNRCC, ALCOA began a fuel sampling program to determine continuous compliance with the emissions limit of 4.0 lbs SO_2/MMBtu.

ALCOA is required to ensure that the total percentage of sulfur contained in the new petroleum coke used in the anodes in the operating potlines and portions of potlines do not exceed the following amount when averaged over a thirty-day period and considering the number of potlines in operation during that period:

Number of operating potlines	Percent SO_2 allowed in new petroleum coke
8	2.6
7 or fewer	3.0

When additional potlines or portions of potlines are started up or shut down, the maximum allowable percentage of sulfur in the new petroleum coke shall conform with the applicable sulfur limits stated above. If ALCOA operates a portion of a potline between the number of potlines specified above, the maximum allowable percentage of sulfur in the new petroleum coke shall be determined by proportional interpolations between the pair of limits specified above. ALCOA will notify the TNRCC Regional Office ten (10) days prior to the start up or shut down of any potline(s) or portions of potlines except that in the case of an emergency shutdown, notice shall be given as soon as reasonably possible.

ALCOA is prohibited from using any new petroleum coke without test reports or on-site testing demonstrating compliance. ALCOA is also required to ensure that the sulfur content of the returned anode butts is no greater than the sulfur content of the new petroleum coke used in the manufacture of those returned anode butts. ALCOA will demonstrate compliance with the total sulfur content limits specified in the Agreed Order by limiting the percent sulfur in new petroleum coke to the petroleum coke supplier and will require its supplier to sample, analyze, and demonstrate that the total sulfur content complies with ALCOA's percent sulfur specification before shipment of any single lot of new petroleum coke is made. Test reports from suppliers may be used to document the sulfur content of new petroleum coke, or on-site testing of each incoming new petroleum coke shipment in accordance with ASTM Methods D346–90 or ASTM D4239–85. ALCOA will maintain records documenting compliance with the requirements of the Agreed Order. Records will include computations which show the amounts and total percent sulfur content of new petroleum coke and the sulfur content of the returned anode butts used in production of anodes. The sulfur content of the returned anode butts may be based on records of the new petroleum coke that went into them and ALCOA records showing the statistically established relationship between that sulfur content and the sulfur content of returned anode butts.

Recordkeeping and Reporting Requirements

ALCOA will maintain a record of the gross power generated for each calendar month, and of the gross power generated for the previous twelve month period. Records will be made available upon request to the TNRCC, the EPA or any local air pollution control agency having jurisdiction. Periodic compliance demonstrations will be conducted at least quarterly beginning with the calendar quarter ending December 31, 1995 using methods prescribed for the initial demonstration in the Agreed Order. Results will be reported to the TNRCC and the EPA Region VI no later than thirty days after the completion of testing.

The provisions for the Milam County Agreed Order are adopted through this SIP action. The Order includes SO_2 maximum allowable emissions limits, recordkeeping, reporting and compliance monitoring requirements and other required stipulations briefly described in this notice. For further details on compliance monitoring and record keeping requirements please reference the Agreed Order and the Technical Support Document.

Final Rulemaking Action

In today's action, the EPA is approving the ALCOA SIP revision which includes among other things, TNRCC Agreed Order No. 95–0583–SIP. Texas's revised Milam County SO_2 Order creates an enforceable restriction on the operations of a primary aluminum smelting plant and three units of a lignite-fueled power plant at the ALCOA facility. This action is also approving revisions to 31 TAC Chapter 112, section 112.8, ''Allowable Emissions From Solid Fossil Fuel-Fired Steam Generators,'' Subsections 112.8(a) and 112.8(b). Adequate modeling demonstrating that the NAAQS for SO_2 and SO_2 PSD increment will be protected in Milam County, Texas was also provided.

This action is being published without a prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comments to the proposal. However, the EPA is publishing a separate document in this Federal Register publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on November 22, 1996, unless the EPA receives adverse or critical comments by October 23, 1996.

If the EPA receives comments adverse to or critical of the approval discussed above, the EPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document. Please be aware that the EPA will institute a second comment period on this action only if warranted by significant revisions to the rulemaking based on comments received in response to this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the EPA hereby advises the public that this action will be effective on November 22, 1996.

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the

procedures published in the Federal Register on January 19, 1989 (54 *FR* 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review. Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, requires that the EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the EPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Reform Act, the EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

This final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less then $100 million in any one year. Therefore the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Small governments will not be significantly or uniquely affected by this rule. Hence, the EPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing State rules into the SIP. It imposes no additional requirements.

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

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, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. The Federal SIP approval does not impose any additional requirements. Therefore, I certify that the SIP does not have a significant impact on any small entities affected. 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 the State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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 22, 1996. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: August 9, 1996.

Allyn M. Davis,

Acting Regional Administrator.

Title 40, part 52, of the Code of the 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 SS—Texas

2. Section 52.2270 is amended by adding paragraph (c) (101) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(101) Revisions to Texas Natural Resource Conservation Commission Regulation II and the Texas State Implementation Plan concerning the Control of Air Pollution from Sulfur Compounds, submitted by the Governor by cover letters dated October 15, 1992 and September 20, 1995. These revisions relax the SO_2 limit from 3.0 lb/MMBtu to 4.0 lb/MMBtu, and include Agreed Order No. 95–0583–SIP, which stipulates specific SO_2 emission limit compliance methodologies for the Aluminum Company of America, located in Rockdale, Texas.

(i) Incorporation by reference.

(A) Texas Natural Resource Conservation Commission Agreed Order No. 95–0583–SIP, approved and effective on August 23, 1995.

(B) Revisions to 31 TAC Chapter 112, Section 112.8, ''Allowable Emissions From Solid Fossil Fuel-Fired Steam Generators,'' Subsections 112.8(a) and 112.8(b) as adopted by the TNRCC on August 23, 1995.

(ii) Additional material.

(A) The State submittal entitled *Revisions to the State Implementation Plan Concerning Sulfur Dioxide in Milam County,* dated June 14, 1995.

(B) The document entitled *Dispersion Modeling Analysis of ALCOA Rockdale Operations, Rockdale, Texas,* dated April 28, 1995 (document No. 1345–05).

[FR Doc. 96–24047 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WA56–7131a; FRL–5603–7]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part several minor revisions to the State of Washington Implementation Plan (SIP) and, at the same time, taking no action on two sections of these revisions which are unrelated to the purposes of the SIP. Pursuant to section 110(a) of the Clean Air Act (CAA), the Director of the Washington Department of Ecology (WDOE) submitted a request to EPA

dated May 24, 1996 to revise certain sections of a local air pollution control agency (the Puget Sound Air Pollution Control Agency) regulations.

DATES: This action is effective on November 22, 1996, unless adverse or critical comments are received by October 23, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the SIP revision request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ)–207), 1200 Sixth Avenue, Seattle, Washington 98101; and Washington State Department of Ecology, 300 Desmond Drive, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Tamara Langton, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–2709.

SUPPLEMENTARY INFORMATION:

I. Discussion of Submittal

The WDOE May 24, 1996 submittal consists of minor amendments to the Puget Sound Air Pollution Control Agency (PSAPCA) Regulations I and III. Regulation I is being amended to be consistent with the state agricultural burning regulations and to allow training fires and fire extinguisher training by rule rather than by PSAPCA's formal written approval. The amendments to Regulation I were adopted by PSAPCA on February 8, 1996, and became effective on March 14, 1996. During the period offered by PSAPCA for public comments, no public testimony was offered.

Regulation III is being amended to include new monitoring and recordkeeping requirements for perchloroethylene dry cleaning operations. This amendment to Regulation III was adopted by PSAPCA on November 8, 1995, and became effective on December 14, 1995. Again, there were no public comments submitted by the public.

The above two minor amendments to Regulation I and III continue to provide clarity to revised sections and overall strengthening measures for the control of ozone within the affected nonattainment areas and, generally, the control of particulate matter.

The PSAPCA amendments submitted by WDOE for inclusion into the SIP are local air pollution regulations which are at least as stringent as the statewide rules of WDOE. EPA has determined that these minor SIP revisions comply with all applicable requirements of the CAA and EPA policy and regulations concerning such revisions.

II. Summary of Today's Action

EPA is, by today's action, approving in part Regulation I, Article 8, Outdoor Fires, sections 8.02 and 8.05, and Regulation III, Article 3, Source-Specific Emission Standards, section 3.03; deleting Regulation I, Article 8, section 8.01, Policy for Outdoor Fires; and, taking no action in part on Regulation I, Article 8, Outdoor Fires, sections 8.07 (Fire Extinguisher Training) and 8.08 (Fire Department Training Exercises) as these revisions are not directly related to the criteria pollutants regulated under the SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment to the SIP 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 22, 1996, unless, by October 23, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will 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, the public is advised that this action will be effective November 22, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for 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.

III. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

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

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

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. 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, 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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 19, 1996.

Charles Findley,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

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 WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (65) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(65) Several minor revisions consisting of amended regulations affecting a local air agency, the Puget Sound Air Pollution Control Agency, were submitted to EPA from the Washington State Department of Ecology for inclusion into the Washington State Implementation Plan.

(i) Incorporation by reference.

(A) Letter dated May 24, 1996 from the Director of the Washington State Department of Ecology to the EPA Regional Administrator submitting revisions to the Puget Sound Air Pollution Control Agency regulations for inclusion into the State Implementation Plan: Puget Sound Air Pollution Control Agency, Regulation I, Article 8, Outdoor Fires, sections 8.02, Outdoor Fires-Prohibited Types, and 8.05, Agricultural Burning, effective 3/14/96; Puget Sound Air Pollution Control Agency, Regulation III, Article 3, Source-Specific Emission Standards, section 3.03, Perchloroethylene Dry Cleaners, effective 12/14/95.

[FR Doc. 96–24051 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5612–8]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Bonneville Power Administration Ross Complex (USDOE) from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the United States Department of Energy (USDOE) Bonneville Power Administration Ross Complex, located in Clark County, Vancouver, Washington, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Washington's Department of Ecology have determined that the Site poses no significant threat to public health or the environment and therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Harney, Site Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue (ECL–111), Seattle, Washington 98101, (206)–553–6635.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Bonneville Power Administration Ross Complex (USDOE), Clark County, Vancouver, Washington.

A Notice of Intent to Delete for this site was published July 18, 1996 (FRL–5537–8). The closing date for comments on the Notice of Intent to Delete was August 19, 1996. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. NCP § 300.425(e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control. Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 10, 1996.

Chuck Clarke,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 2 of Appendix B to part 300 is amended by removing the site for Bonneville Power Administration Ross (USDOE), Vancouver, Washington.

[FR Doc. 96–24199 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 110 and 161

[CGD 94–108]

RIN 2115–AF24

Electrical Engineering Requirements for Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Correction to interim rule.

SUMMARY: This document contains corrections to the interim rule that was published June 4, 1996, as part of the President's Regulatory Reinvention Initiative. The interim rule amends the Coast Guard's electrical engineering regulations.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Project Manager, Office of Design and Engineering Standards (G–MSE), (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Background

The interim rule that is the subject of these corrections amends the Coast Guard's electrical engineering regulations to reduce the regulatory burden on the marine industry, purge obsolete regulation, and replace prescriptive requirements with performance-based regulations that incorporate international standards.

Need for Correction

Based upon review of the interim rule by the Office of the Federal Register, the following corrections were identified as necessary to avoid confusion by the reader.

Correction of Publication

Accordingly, the publication on June 4, 1996, of the interim rule at 61 FR 28260, which was the subject of FR Doc. 96–13416, is corrected as follows:

§ 110.10–1 [Corrected]

1. On page 28273, in the list of National Fire Protection Association standards, in the list of sections affected for NFPA 70, National Electrical Code (NEC), after ''111.50–3(c);'', add ''111.50–7;''.

2. On page 28292, in the second column, the amendatory paragraph 217 should read as follows: 217. In § 161.002–10, in paragraph (b), revise the paragraph heading and paragraph (b)(1) to read as follows; in paragraph (b)(2), remove ''signal'' in the paragraph heading and add, in its place, ''alarm'' and remove ''signals'' and add, in its place, ''alarms''; in paragraph (b)(3), remove ''signal'' in the paragraph heading and add, in its place, ''alarm'', remove ''fire bells'' and add, in its place, ''audible fire alarms'', remove ''fire bell'' and add, in its place, ''audible fire alarm'', and remove ''fire signal'' and add, in its place, ''fire alarm''; in paragraph (b)(4), remove ''alarm signals simultaneously'' and add, in its place, ''alarms simultaneously'', remove ''fire alarm bells'' and add, in its place, ''audible fire alarms'', and remove ''succeeding fire alarm signals'' and add, in its place, ''succeeding sensor signals''; in paragraph (b)(5), remove ''signals'' and add, in its place, ''alarms''; in paragraph (c)(3), remove ''Fire bells'' in the paragraph heading and add, in its place, ''Audible fire alarms'' and remove ''fire bell'' and add, in its place, ''audible fire alarm''; in the heading to paragraph (d), remove ''alarm signals'' and add, in its place, ''alarms''; in paragraph (d)(1), in the first sentence, remove ''bell'', in the second sentence, remove ''power failure'' and ''bell'', and, in the third sentence, remove ''power failure alarm bell for'' and add, in its place, ''alarm of''; in paragraph (d)(2), in the paragraph heading, remove ''signal'' and add, in its place, ''alarm'' and remove ''power failure alarm bell'' and add, in its place, ''audible power failure alarm''; in paragraph (e), in the paragraph heading, remove ''alarm signals'' and add, in its place, ''alarms'', in paragraph (e)(1), remove ''bell or buzzer'', and remove ''fire alarm signal'' and add, in its place, ''fire alarm''; paragraph (e)(2) is revised to read as follows; in paragraph (e)(3), remove ''alarm signals'' and add, in its place, ''alarms'' and remove ''alarm signal'' and add, in its place, ''alarm''; in paragraph (e)(4), remove ''alarm signals'' and add, in its place, ''alarms''; in paragraph (f)(1), remove ''fire alarm condition'' and add, in its place, ''fire condition''; and paragraphs (i) through (m) are removed:

§ 161.002–10 Automatic fire detecting system control unit.

* * * * *

(b) *Fire alarms*—(1) *General.* The operation of a fire detecting and alarm system must cause automatically—

(i) The sounding of a vibrating type fire bell with a gong diameter not smaller than 15 cm (6 inches) or other audible alarm that has an equivalent sound level and that is mounted at the control unit and at the remote annunciator panel, when provided;

(ii) The sounding of a vibrating type fire bell with a gong diameter not smaller than 20 cm (8 inches) or other audible alarm that has an equivalent sound level and that is located in the engine room; and

(iii) an indication of the fire detecting zone from which the signal originated, visible at the control unit and at the remote annunciator panel, when provided;

* * * * *

(e) * * *

(2) *Silencing audible alarm.* Manual means shall be provided at the control unit to silence the audible alarm. Operation of the silencing means shall permit the visible alarm to remain until the trouble has been corrected.

* * * * *

Dated: September 17, 1996.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–24355 Filed 9–20–96; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–29; Notice 11]

RIN 2127–AG06

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends Standard No. 121, *Air Brake Systems,* to specify the location, labeling, color, activation protocol, and photometric intensity of antilock brake system (ABS) malfunction indicator lamps on the exterior of trailers and trailer converter dollies. The purpose of the malfunction indicator lamp is to inform drivers, and maintenance and inspection personnel, of malfunctions in a trailer's ABS.

DATES: *Effective dates.* The amendments to 49 CFR 571.121 are effective March 1, 1997.

Compliance dates. Compliance with the amendments to paragraph S5.2.3.3 (b) will be required on and after March 1, 1998.

Incorporation by reference. The incorporation by reference of a publication listed in the regulation is approved by the Director of the Federal Register as of March 1, 1997.

Petitions for reconsideration. Any petitions for reconsideration of this rule must be received by NHTSA no later than November 7, 1996.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above referenced docket numbers and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Robert M. Clarke, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–5278.

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–2992.

SUPPLEMENTARY INFORMATION:

I. Background
II. Petitions for Reconsideration and Notice of Proposed Rulemaking
III. Comments on the December NPRM
IV. Agency Decision
A. General Considerations
B. Location
C. Color
D. Activation Protocol
E. Intensity and Photometric Requirements
V. Costs
VI. Rulemaking Analyses and Notices

I. Background

On March 10, 1995, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air brake systems,* to require medium and heavy vehicles to be equipped with an antilock brake system (ABS) (60 FR 13216). Truck tractors will be required to be equipped with ABS beginning March 1, 1997, and air-braked trailers and single-unit trucks will be required to be so equipped beginning March 1, 1998. These vehicles also will be required to be equipped with indicator lamps to alert their drivers of ABS malfunctions. Each truck equipped to tow trailers, including a truck tractor, will be required to be equipped with two in-cab warning lamps: one to indicate malfunctions of its own ABS, and another to indicate ABS malfunctions on units it tows. Trailers will be required to be equipped with an electrical circuit capable of signaling a trailer ABS malfunction to the cab of the towing unit.

NHTSA recognized that, during the initial transition period, there is a high likelihood that new ABS-equipped trailers will frequently be towed by older, non ABS-equipped tractors or trucks that will not have the capability to receive ABS malfunction signals transmitted from trailers. Accordingly, to provide drivers, and maintenance and inspection personnel, with the ability to determine a malfunction with the trailer ABS, the agency has required that trailers (including converter dollies) also be required to be equipped with a separate external ABS malfunction indicator. The March 10, 1995, final rule specified an interim eight-year period, from March 1, 1998, to March 1, 2006, during which these external ABS malfunction indicator lamps must be installed on trailers.[1] The agency reasoned that, after that time period, there would be sufficient new ABS-equipped truck tractors and towing trucks fitted with in-cab trailer ABS malfunction warning indicators to obviate the need for the separate trailer-mounted ABS malfunction warning lamp. The agency intended the trailer-mounted lamps to be visible to drivers using their outside rearview mirrors.

II. Petitions for Reconsideration and Notice of Proposed Rulemaking

NHTSA received 16 petitions for reconsideration to the March 10, 1995 final rule. Most of these petitions addressed testing and implementation issues associated with the requirements for ABS. In addition, Midland-Grau and the Truck Trailer Manufacturers Association (TTMA) requested changes in the requirements for external trailer ABS malfunction indicator lamps. Specifically, they petitioned NHTSA to delete the requirement that the external malfunction indicator lamp on a trailer be visible from the driver's seating position ''through the rearview mirrors.'' (see S5.2.3.3). Midland-Grau stated that since truck tractor manufacturers cannot control where the external lamp would be located, requiring tractor manufacturers to ensure that the lamp is visible from the cab of the truck tractor is unreasonable. TTMA stated that since trailer manufacturers cannot control where mirrors are located on tractors, requiring the ABS malfunction lamp on dollies and trailers to be visible ''through the rearview mirrors'' is not appropriate. That organization also stated that there is no good, practical location for such a lamp on a dolly.

On December 13, 1995, NHTSA published two notices in response to the petitions for reconsideration: (1) A final rule (60 FR 63965) that amended portions of the standard dealing with ABS and stopping distance requirements, and (2) a notice of proposed rulemaking (NPRM) (60 FR 64010) that proposed changing the requirements for the location, color, and intensity of the external ABS malfunction lamps on trailers and dollies.

On February 15, 1996, NHTSA issued another final rule (61 FR 5949) that responded to 13 petitions for reconsideration to the December 13, 1995 final rule. Specifically, the agency amended the trailer ABS electrical powering requirements and adopted a four-year delay in the effective date on which truck tractors and trucks equipped to tow trailers must be capable of receiving and displaying ABS malfunction warning signals from trailers. Because of the delay in the requirement for in-cab signaling, the agency extended the transition period during which trailers must be equipped with the external ABS malfunction indicator. Thus, these lamps must be equipped on trailers manufactured on and after March 1, 1998, and before March 1, 2009.

III. Comments on the December NPRM

NHTSA received comments on the proposal to amend the external trailer ABS malfunction indicator requirements from TTMA, Midland-Grau, the American Trucking Associations (ATA), the American Society of Safety Engineers (ASSE), Truck-Lite, Inc., and Grote Industries, Inc. The commenters generally agreed with the need for the external trailer ABS malfunction indicator lamp. Most commenters requested that the lamp be located at the trailer's rear rather than at its front. The agency's responses to specific comments about the lamp's location, labeling, color, activation protocol, and photometric requirements are set forth below.

IV. Agency Decision

A. General Considerations

After reviewing the comments and other available information, NHTSA has decided to adopt requirements with respect to the location, color, activation protocol, and photometric intensity of the external ABS malfunction lamps on trailers and trailer converter dollies. The ABS malfunction indicator lamp on a trailer will have to be mounted near the rear of the left side of the trailer, no closer than 150 mm (5.9 inches) and not more than 600 mm (23.6 inches) from the rear red side marker lamp. The ABS malfunction indicator lamp for a converter dolly will have to be mounted on a permanent structure on the dolly at least 375 mm (14 inches) above the road surface. In all cases, the malfunction indicator lamp must be yellow and be illuminated whenever power is supplied to the ABS and there

[1] A final rule responding to petitions for reconsideration extended this requirement until March 1, 2009 (61 FR 5949, February 15, 1996).

is a malfunction. The lamps will also meet the requirements for combination clearance side marker lamps specified by the Society of Automotive Engineer's (SAE's) Recommended Practice J592 July 1972 or JUN92 which is referenced in Standard No. 108. The specific details of each requirement are discussed below

B. Location

In the December 1995 NPRM, NHTSA proposed that the trailer ABS malfunction indicator lamp be located on the left side of each trailer, as close to the front as practicable, and at a height as close as practicable to 96 inches above the road surface. The proposed location requirement was patterned after a previous agency proposal to require a low air pressure warning lamp on trailers. (55 FR 4453, February 8, 1990) The proposed height was consistent with the mean driver eye height, as reported in a University of Michigan study.[2] Given anticipated practicability problems for some trailers, such as flatbeds and lowboys, the agency also proposed that the malfunction indicator lamp could be located on the front of the trailer, as far leftward as possible and at a height as close to 96 inches as practicable.

Truck-Lite agreed with the proposal to locate the external ABS indicator near the front of the trailer. TTMA, ATA, Midland-Grau, and Grote recommended that this indicator be located at the rear of the trailer near the red side marker lamp. They stated that such a location would allow the indicator to be visible and readily detected when activated, provided that the ABS malfunction indicator were yellow. These commenters stated that such a location would be readily visible to drivers who use the red side marker lamp as a visual location cue to help them track the lateral position of their trailer when making turns.

NHTSA has decided to require that the external trailer ABS malfunction indicator lamp be located near the rear of the trailer. The agency believes that this lamp will be readily seen by drivers using their rearview mirrors, and during walkaround vehicle inspections. The agency notes that this lamp will only activate in those rare situations when the trailer ABS has malfunctioned. The external trailer ABS malfunction indicator must be located near the rear of the left side of a trailer when viewed from the rear of the trailer, no closer than 150 mm (5.9 inches) and not more than 600 mm (23.6 inches) from the rear red side marker lamp. The agency selected this range to ensure a standardized location of this lamp near the trailer rear, thereby facilitating its being viewed by drivers, while providing flexibility to trailer manufacturers. This requirement combines the suggestions of Midland-Grau, TTMA, ATA, and Grote, concerning the specific location requirements for the trailer ABS malfunction indicator relative to the red rear side marker lamp.

This decision reflects several considerations. In this standardized location, the lamp can be seen by drivers, as well as fleet maintenance and roadside inspection personnel, during pre-trip and post-trip inspections. Platform trailers, pole/logging trailers, and other miscellaneous trailers typically lack a front face. Based on Table 1 below, these trailers account for approximately 25 percent of all trailers. For such trailers, a front mounting position of the external malfunction indicator would have been problematic. In contrast, an external malfunction indicator can be mounted on the rear left of all trailers, even platform and other trailers that may have had difficulty complying with the proposal for locating the indicator by the trailer's front face. Moreover, locating the lamp in the rear also reduces installation costs and improves durability since less wire will be needed between the ABS electronic control unit (ECU) and the light it activates, compared to locating the indicator at the front of trailers. Accordingly, NHTSA believes that requiring the indicator lamp to be located on the rear left side will provide manufacturers sufficient latitude and flexibility in equipping their trailers with this lamp.

TABLE 1.—U.S. COMMERCIAL TRUCK FLEET BY MAJOR BODY TYPE* (1992)

Cargo body type	Percent of 1992 fleet population
Platform	22.2
Van	44.5
Auto Transport	1.5
Dump	10.1
Grain Bodies	4.2
Garbage/Refuse	0.4
Livestock	1.3
Pole/Logging	3.2
Tank/Dry Bulk	2.0
Tank/Liquids or Gas	7.4
Others	3.2
Total	100.0

*Source: 1992 Truck Inventory and Use Survey, U.S. Census Bureau.

Truck-Lite was the only commenter to specifically address NHTSA's proposal to require that a malfunction indicator lamp be placed on a permanent structure of the dolly and be visible to a person standing on the road surface near the location of the indicator. That commenter agreed with the agency's proposal. Since the agency continues to believe that the proposed location for dollies is appropriate, the agency has decided to adopt the location requirement for dollies, as proposed.

C. Color

In the December 1995 NPRM, NHTSA proposed that the external ABS malfunction indicator be yellow. The agency reasoned that this color was consistent with the requirements in Standard No. 101, *Controls and displays*, which requires that in-vehicle ABS malfunction indicator lamps be yellow. The agency further stated that selecting this color would harmonize the requirement with the vehicle standards of the International Organization for Standardization (ISO) and the Economic Commission for Europe (ECE) which specify red to indicate brake failure and yellow to indicate ABS malfunction. While NHTSA recognized that these color requirements are applicable to instrument panel lamps and do not address ABS malfunction indicator lamps on the exterior of a vehicle, the agency stated that it is desirable to have a uniform protocol. The agency tentatively concluded that the same requirements should be applied to external ABS malfunction lamps since they perform the same function as in-vehicle ABS malfunction lamps. The agency further concluded that a green status lamp on the trailer exterior would be inconsistent with the already established convention, thereby creating confusion among drivers.

TTMA, Midland-Grau, and Grote recommended that the external ABS malfunction indicator lamp be yellow, provided that it was located at the trailer's rear. These commenters believed a yellow color was necessary to make it possible for drivers to distinguish this lamp from the red rear side marker lamp. They stated that a yellow lamp would be visible and readily detected, when activated, because the red rear side marker lamp is now routinely seen by drivers using their rearview mirrors. ATA stated, without explanation, that a yellow malfunction indicator should not be mounted at the trailer's rear. ATA favored a green status indicator, stating that the SAE Truck and Bus ABS Task Force had recently issued a

[2] "The Influence of Truck Driver Eye Position on the Effectiveness of Retroreflective Traffic Signs," by Sivak, Flannagan, and Gellatly, September 1991.

recommended practice that ''status indicators'' on a vehicle's exterior should be green and should illuminate when the ABS is operating properly.

After reviewing the available information, NHTSA has decided to require the external trailer ABS malfunction indicator lamp to be yellow. The agency believes that yellow will minimize confusion, be readily understandable by drivers, and be distinguishable from the red rear side marker lamps.[3] NHTSA believes that while a green light is appropriate to indicate that a system is operating properly, it would be potentially confusing to indicate that a system such as the trailer ABS is malfunctioning. The commonly accepted convention for indicating the readiness of a system is an activated green light. NHTSA notes that there would be no prohibition against supplementing the required yellow external malfunction indicator lamp on a trailer with a green lamp on the ECU to indicate the trailer ABS's status. Such a supplemental lamp would not have to conform to any of the color or protocol requirements specified for the external trailer ABS malfunction indicator lamp.

TTMA, ATA, Midland-Grau, and Grote suggested that the trailer ABS malfunction indicator lamp be labeled with the letters ''ABS'' to distinguish this lamp from other, otherwise identical, yellow side marker lamps. They suggested several ways to distinguish the yellow side markers from the trailer ABS indicator, including a decal on the lens itself; a permanent marking on the lens or its housing; or a permanent decal or plaque affixed to the trailer structure, at a location immediately adjacent to the lamp.

NHTSA has decided to require the yellow trailer ABS malfunction indicator lamp to be identified with the letters ''ABS'' to distinguish this lamp from the yellow side marker/clearance lamps. This identification is intended to inform drivers and others making a pre-trip inspection that this lamp functions as a trailer ABS malfunction indicator. The agency has specified several acceptable methods of permanently marking the lamp to provide manufacturers with flexibility in complying with this requirement. Specifically, a manufacturer may use any of the following ways to permanently identify the trailer ABS malfunction indicator: marking the lens, marking the lens housing, affixing a label or plaque to the trailer near the indicator, or painting the trailer near the indicator.

NHTSA is also specifying minimum character size requirements for the indicator lamp identification, which are based on generally recognized human factors design principles.[4] The agency based its selection of the character sizes on its assumption that 15 feet was a reasonable estimate of the distance between the driver or mechanic during a pre-trip walk-around inspection of a trailer.

D. Activation Protocol

In earlier comments and its petition for reconsideration, TTMA requested the lamp to be lit continuously when the ABS is functioning properly and to be extinguished when there is a malfunction in the ABS.

NHTSA addressed this issue in detail in the March 1995 final rule on heavy vehicle ABS rulemaking. In that notice, the agency decided to require that the ABS malfunction indicator lamp be lit when a malfunction exists and not be lit when the antilock system is functioning properly. S5.2.3.3 of Standard No. 121 further requires that the trailer ABS malfunction indicator lamp be lit during the check-of-lamp function only when the vehicle is stationary and power is first supplied to the antilock system. This allows the ABS lamp on a trailer that is moving to undergo the check of lamp function, without the lamp cycling on and off whenever the brakes are applied. The agency stated that such a requirement eliminates distractions for the driver and for drivers of adjacent vehicles, created by the ABS lamp cycling on and off with every brake application. The agency emphasized that in the event of a malfunction in the trailer antilock system, the malfunction indicator lamp would be lit whenever power is supplied to the trailer antilock system, regardless of whether the vehicle is stationary or moving. Accordingly, the agency decided to deny TTMA's request in its petition for a change in the ABS malfunction indicator lamp protocol and proposed no change to the protocol included in the ABS final rule.

No commenter addressed the trailer ABS indicator's activation protocol.

NHTSA continues to believe that the ABS malfunction indicator lamp should follow the accepted convention of activating when a malfunction exists and not activating when the antilock system is functioning properly. Thus, this protocol, first contained in the March 10, 1995 final rule requirements, remains in effect.

E. Intensity and Photometric Requirements

In their original petition to the March 10, 1995 final rule, AAMA and TTMA petitioned NHTSA to require that the external ABS malfunction indicator lamp be subject to the same photometric[5] requirements as those specified in Standard No. 108.

NHTSA tentatively agreed with these petitioners in its December 13, 1995, final rule and proposed that the lamps meet the photometric requirements for clearance, side marker, and identification lamps specified by SAE Recommended Practice J592 JUN92 for clearance lamps, which are referenced in Standard No. 108. Specifically, the agency proposed that ABS malfunction indicator lamps meet the photometric performance requirements specified in SAE J592 JUN92 for the luminous intensity of side marker lamps. Those requirements specify minimum intensity values at test points of 45 degrees along a horizontal axis and 10 degrees along a vertical axis, when measured from a lamp distance of at least three meters. In addition, the agency proposed that the lamp be mounted on the trailer in such a manner that its beam is directed toward the front of the trailer and rotated 90 degrees so that its top and bottom become its sides. The agency believed that such an orientation of the lamp would ensure that its widest light beam is in a vertical plane just outboard of the side of the trailer, and hence would be more likely to be visible by the driver through the tractor's rearview mirrors.

Truck-Lite, TTMA, and Midland-Grau requested that conformance be allowed to the July 1972 version of SAE J592 (as well as the June 1992 version), since that earlier version is referenced in Standard No. 108 and many currently manufactured and stocked lamps have been certified as having met that version of the standard. These commenters also stated that the agency's proposal to rotate the lamp 90 degrees was inappropriate since the requirement would necessitate designing new lamps for an extremely limited market. They suggested that such a redesign would add costs for little apparent gain. Alternatively, they requested the agency require the use of a combination clearance/side marker lamp instead of a

[3] Table I of Standard 108 includes a requirement for, on the side of each trailer, a yellow clearance lamp at the front and a red clearance lamp at the rear.

[4] ''Visual Display Character Size,'' Woodson, WE Human Factor Design Handbook, McGraw-Hill, New York, 1981, pages 494–495.

[5] Photometric values specify the amount of light emitted by a lamp, when measured from a specified distance.

simple side marker lamp, because the combination lamps, which have ''PC'' or ''P2'' marked on the lens or housing in accordance with SAE J579c, Lighting Identification Code, have a uniform and wide diffused beam pattern throughout the full 180 degree left and right range. Thus, if this type lamp was used, rotating the lenses, or mounting the lamp facing toward the front of the trailer would be unnecessary.

After reviewing the comments, NHTSA has amended the standard to permit conformance to either the July 1972, or June 1992 version of SAE J592. Additionally, the standard has been amended to require that a combination clearance/side marker lamp with a ''PC'' or ''P2'' marked on the lens or housing in accordance with SEA J759 Jan 95, *Lighting Identification Code*, be used as the external trailer ABS warning lamp. The agency agrees with the commenters that this change will provide additional flexibility, without any detriment to safety. Based on the available information concerning the light output pattern of combination clearance/side marker lamps, the agency has decided that rotating lamps is not necessary to achieve the intended function of this lamp.

V. Costs

NHTSA has already evaluated the economic impact of requiring trailers and dollies to be equipped with an external ABS malfunction indicator lamp in the final rule on heavy vehicle ABS published on March 10, 1995. The agency estimated that the unit cost of requiring an ABS lamp on trailers and dollies is $9.43. Since this rule does not require additional equipment, but only specifies location, color and photometric intensity for the trailer ABS malfunction indicator lamp, the rule should not have any impact on previously estimated costs or benefits. The agency notes that there will be some nominal additional costs associated with the labeling requirements. There will also be some cost savings, compared to the December 1995 proposal, since manufacturers will not have to redesign those trailers lacking a front face on which to install a malfunction indicator lamp. Under the proposal, a significant minority of trailers (approximately 25 percent) would have needed a permanent structure attached to the trailer to comply with the proposed requirement. Locating the lamp in the rear also reduces installation costs and improves durability since less wire will be needed between the ABS electronic control unit (ECU) and the light it activates, compared to locating the indicator at the front of trailers.

VI. Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The impacts of the rule are so minimal as not to warrant preparation of a full regulation evaluation. As noted above, NHTSA has already evaluated the economic impact of requiring an external ABS malfunction indicator lamp. For details, see the Final Economic Assessment (FEA) titled, ''Final Rules FMVSS Nos. 105 & 121 Stability and Control While Braking Requirements and Reinstatement of Stopping Distance Requirements for Medium and Heavy Vehicles,'' published in June 1994.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically do not qualify as small entities. Further, aside from the relatively small cost impacts noted above, the amendment will not affect costs or benefits beyond those addressed in the (FEA) for the ABS final rule. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws are affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule does not significantly affect the human environment.

5. Civil Justice Reform

The rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber.

In consideration of the foregoing, the agency is amending Standard No. 121, *Air Brake Systems,* in Title 49 of the Code of Federal Regulations, Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121, as revised at 61 FR 27290 effective March 1, 1997, is amended by revising S5.2.3.3, to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.2.3.3 Antilock malfunction indicator.

(a) In addition to the requirements of S5.2.3.2, each trailer and trailer converter dolly manufactured on or after March 1, 1998, and before March 1, 2009, shall be equipped with an external antilock malfunction indicator lamp that meets the requirements of S5.2.3.3 (b) through (d).

(b)(1) The lamp shall be designed to conform to the performance requirements of Society of Automotive Engineers (SAE) Recommended Practice J592 JUN92, or J592e, July 1972, *Clearance, Side Marker, and Identification Lamps,* for combination, clearance, and side marker lamps, which are marked with a ''PC'' or ''P2'' on the lens or housing, in accordance with SAE J759 Jan 95, *Lighting Identification Code.* SAE J592 June 92, SAE J592e July 1972, and SAE J759 January 1995, are incorporated by reference and thereby are made part of this standard. The Director of the Federal Register approved the material

incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be inspected at NHTSA's Docket Section, 400 Seventh Street, SW., room 5109, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Washington, DC.

(2) The color of the lamp shall be yellow.

(3) The letters ''ABS'' shall be permanently molded, stamped, or otherwise marked or labeled in letters not less than 10 mm (0.4 inches) high on the lamp lens or its housing to identify the function of the lamp. Alternatively, the letters ''ABS'' may be painted on the trailer body or dolly or a plaque with the letters ''ABS'' may be affixed to the trailer body or converter dolly; the letters ''ABS'' shall be not less than 25 mm (1 inch) high. A portion of one of the letters in the alternative identification shall be not more than 150 mm (5.9 inches) from the edge of the lamp lens.

(c) Location requirements. (1) Each trailer that is not a trailer converter dolly shall be equipped with a lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear, no closer than 150 mm (5.9 inches), and no farther than 600 mm (23.6 inches), from the red rear side marker lamp.

(2) Each trailer converter dolly shall be equipped with a lamp mounted on a permanent structure of the dolly so that the lamp is not less than 375 mm (14.8 inches) above the road surface when measured from the center of the lamp with the dolly at curb weight. When a person, standing 3 meters (9.8 feet) from the lamp, views the lamp from a perspective perpendicular to the vehicle's centerline, no portion of the lamp shall be obscured by any structure on the dolly.

(d) The lamp shall be illuminated whenever power is supplied to the antilock brake system and there is a malfunction that affects the generation or transmission of response or control signals in the trailer's antilock brake system. The lamp shall remain illuminated as long as such a malfunction exists and power is supplied to the antilock brake system. Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system. The lamp shall be automatically reactivated when power is again supplied to the trailer's antilock brake system. The lamp shall also be activated as a check of lamp function whenever power is first supplied to the antilock brake system and the vehicle is stationary. The lamp shall be deactivated at the end of the check of lamp function, unless there is a malfunction or a message about a malfunction that existed when power was last supplied to the antilock brake system.

* * * * * *

Issued on: September 11, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–23796 Filed 9–20–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 091796B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1996 pollock total allowable catch (TAC) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), September 18, 1996, until 2400 hrs, 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.

The 1996 pollock TAC in Statistical Area 610 was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 25,480 metric tons (mt). (See § 679.20(c)(3).)

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined, in accordance with § 679.20(d)(1), that the 1996 pollock TAC in Statistical Area 610 soon will be reached. The Regional Administrator established a directed fishing allowance of 24,680 mt, and has set aside the remaining 800 mt as bycatch to support other anticipated groundfish fisheries. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610.

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

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: September 17, 1996.

Bruce Morehead,

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

[FR Doc. 96–24318 Filed 9–18–96; 12:54 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 185
Monday, September 23, 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

Farm Service Agency

7 CFR Part 704

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AE95

Conservation Reserve Program—Long-Term Policy

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) propose to amend the Conservation Reserve Program (CRP) regulations to: set forth the terms and conditions of enrolling acreage in the CRP; update program eligibility requirements; consolidate and reorganize all CRP regulations into one regulation to cover all existing contracts; and eliminate unnecessary regulations. This action is being taken to cost effectively target the CRP to more environmentally sensitive acreage and because The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) authorized the use of CCC funds to implement the CRP.

These actions will: Update program eligibility requirements; eliminate unnecessary regulations; improve remaining regulations; and complete some of the actions being taken by FSA as part of the National Performance Review Initiative to eliminate unnecessary regulations and improve those that remain in force.

DATES: Comments must be received on or before November 7, 1996 to be assured of consideration.

ADDRESSES: Comments and requests for additional information should be directed to Cheryl Zavodny, Conservation and Environmental Protection Division, FSA, P.O. Box 2415, STOP 0513, Washington, DC 20250–0513, telephone 202–720–7333.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be Economically Significant and was reviewed by Office of Management and Budget (OMB) under Executive Order 12866.

Cost-Benefit Assessment

A cost-benefit assessment was prepared to assist in implementing provisions of the 1996 Act amendments to the Food Security Act of 1985, as amended, and setting forth long-term CRP policy relating to extension of enrollment authority, changes in eligibility, and related adjustments in CRP. Key environmental impacts are considered in the cost-benefit assessment.

Although the proposed rule does not specify an acreage target for future enrollment, enrolled acres are projected in the cost-benefit assessment to decline to 28.1 million acres by 2002. However, while instructive, the analysis should not be viewed as an indication of future enrollment policy. Without the authority to extend or enroll acreage the expiration of the existing contracts would result in an estimated decline in enrolled acreage to 1.7 million acres by 2002.

As noted in the cost-benefit assessment, which was based on the issues that are discussed in the Background section, continued enrollment would generate an estimated $17 billion in added income to program crop producers during the period 1997 to 2002 as a result of higher crop prices and CRP rental payments. Government outlays with continued enrollment would be about $7 billion higher during the period compared to outlays without continued enrollment. Additional expenditures by domestic and foreign purchasers of the commodities would total about $19 billion over the 1997 to 2002 period. This exceeds net farm income adjusted for CRP payments by $8.4 billion. However, this assessment is incomplete because it does not include any measure of the value of the benefits gained from enrolling the environmentally sensitive cropland in CRP which is the primary purpose of the program. Total funds available for production flexibility contracts do not vary with CRP enrollment, although payment rates for participating producers will decline as additional acreage is removed from CRP and becomes eligible for contract payments.

Also evaluated in the cost-benefit assessment are the impacts from changes in acreage eligible for early release, incentive payments for enrollment of high-valued environmental practices, enrollment of wetlands, designation criteria for priority areas, and potential provisions for limited haying and grazing on enrolled acres. The impacts of these changes are modest, although the general thrust is to enhance the environmental benefits from the program with little effect on outlays or farm income.

Risk Assessment

A risk assessment and related cost-benefit analysis are required to accompany proposed major rules, as defined under Section 304 of Public Law (P.L.) 103–354. Because agricultural producers need to know long-term objectives of the CRP as soon as possible in order to formulate production plans for 1997 and because completion of the regulatory analysis required by Section 304 of P.L. 103–354 to accompany a proposed regulation is not practicable in the time available, the Director, Office of Risk Assessment and Cost-Benefit Analysis (ORACBA), has concluded that it is appropriate to extend the time allowed for completion of the required analyses. A general time line for conducting the required analyses developed by the Director and the FSA involves a three-phase approach.

Phase 1. Available upon request will be: (a) an environmental assessment and (b) an acceptable outline to guide the development of the required risk assessment.

Phase 2. Accompanying the final rule will be: (a) the completed environmental risk assessment, as described in this proposed rule; (b) an outline of a cost-benefit analysis of mitigation measures; (c) a comparison of the relative risks managed by CRP and by other programs in the Department which address similar risks resulting from comparable activities; and (d) a plan for monitoring of the risk reduction expected to occur as a result of the CRP (as called for in P.L. 104–127). Evaluation and monitoring will allow completion of a meaningful cost-benefit analysis of the current and potential

enrollment practices compared to measured environmental benefits.

Phase 3. One year after the final rule has been promulgated, the cost-benefit analysis of mitigation measures will be completed. This cost-benefit analysis will address the costs associated with implementation and compliance with the regulation and the qualitative and quantitative benefits of the regulation.

After the final rule has been promulgated, FSA, in consultation with ORACBA, will conduct the comprehensive risk management assessment which will evaluate the effectiveness of the program in protecting the environmental attributes managed by this program.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because neither the FSA nor the CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental assessment that this rule does not have a significant adverse impact on the environmental, historical, social or economic resources of the Nation. Therefore, it has been determined that these actions will not require an Environmental Impact Statement.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

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, CCC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or 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 CCC 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. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Conservation Program—10.069.

Paperwork Reduction Act

The CRP is a voluntary program in which landowners and operators can enter into long-term contracts with the CCC to establish permanent vegetation cover for land that is highly erodible or is contributing to a serious water quality or other environmental problem. Landowners and operators interested in participating in the program submit offers which, if accepted, result in contracts. The CCC provides contract participants with cost-share assistance for cover establishment and annual rental payments for the term of the contract.

Information collections are used by interested parties in submitting offers and enrolling in the program, and by participants in documenting requests for program payments, reporting annual program compliance, and documenting other actions relating to program administration.

Title: 7 CFR Part 704, 1986–1990 Conservation Reserve Program and 7 CFR Part 1410, 1991–1995 Conservation Reserve Program.

OMB Number: 0560–0125.

Approval Date of Expiration: February 28, 1997.

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

Abstract: It is proposed that all CRP information collections will be consolidated in 7 CFR Part 1410 and cease under 7 CFR Part 704. Total public burden hours are based on the following assumptions:

1. CRP contracts average 100 acres per contract.

2. CRP contracts for approximately 23 million acres are scheduled to expire on September 30, 1997. The Secretary has the authority to maintain up to 36.4 million acres in the program through 2002. The agency assumed for purposes of this notice that approximately 4.0 million acres will be newly enrolled or re-enrolled in each of the years 1997 through 2002.

3. Twenty-five percent of the producers requesting early releases will not release all of their contract acreage.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .126132 hours per response.

Respondents: Owners, operators, and other producers on eligible cropland.

Estimated Number of Respondents: 272,500

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden Hours on Respondents: 34,371

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 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 Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 and to Cheryl Zavodny, Chief, Conservation Programs Branch, Conservation and Environmental Protection Division, USDA, FSA, P.O. Box 2415, STOP 0513, Washington, D.C. 20013, (202) 720–7333.

Copies of information collection may be obtained from Cheryl Zavodny, Chief, Conservation Programs Branch, Conservation and Environmental Protection Division, USDA, FSA, P.O. Box 2415, STOP 0513, Washington, D.C. 20013, (202) 720–7333.

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

All responses will be summarized and included in the request for OMB

approval. All comments will also become a matter of public record.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule are not retroactive and preempt State and local laws to the extent such laws are inconsistent with the provisions of this rule. Before any action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded program participants at 7 CFR parts 11, 624, and 780 must be exhausted.

Background

The CRP was authorized by the Food Security Act of 1985 (1985 Act), and amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act). The Code of Federal Regulations contains two parts established for the CRP. An agency regulation, 7 CFR Part 704, contains provisions regarding the CRP acreage enrolled under the 1985 Act from 1986 through 1990. A Commodity Credit Corporation regulation, 7 CFR Part 1410, contains provisions regarding the CRP acreage enrolled under the 1990 Act from 1991 through 1995.

The 1985 Act was further amended by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) which provided the Secretary the authority to maintain up to 36.4 million acres in the CRP.

The purpose of CRP is to cost effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long term vegetative cover. CRP participants enroll contracts for 10 to 15 years and, in some cases, easements, in exchange for annual rental payments and cost share assistance for installing certain conservation practices. In determining the amount of annual rental payments to be paid, CCC considers, among other things, the amount necessary to encourage owners or operators of eligible cropland to participate in the CRP. Applicants submit bids in such a manner as the Secretary prescribes. The maximum rental payments CCC will pay reflect site-based soil productivity, prevailing local cash equivalent rental rates and maintenance cost. Bids offered by producers who request rental payments greater than the amount which CCC is willing to pay for their soil type are automatically rejected by CCC. Except for the continuous signup process implemented in September 1996, remaining bids are evaluated for possible acceptance based on a comparison of environmental benefits indicators with the rental payment cost. The continuous signup process does not include an evaluation based on environmental benefits indicators because only those practices designed to obtain high environmental benefits will be eligible to be offered during the continuous signup. Acreage determined eligible for continuous signup by the Secretary is automatically accepted in the program providing all other eligibility requirements are met.

Program Changes

The Department proposes to remove 7 CFR Part 704 and combine those remaining regulations still in effect into 7 CFR Part 1410. It is proposed that Part 1410 be reissued in its entirety.

The 1996 Act provides guidance regarding conservation priority areas under Environmental Conservation Acreage Reserve Program. Section 1410.3 has been amended accordingly to reflect the new provisions.

With respect to land eligibility, CCC proposes to change, in Section 1410.6, the existing criteria to include wetlands and certain acreage enrolled in the Water Bank Program (WBP) administered by the Natural Resource Conservation Service. Wetlands are intrinsically valuable natural resources that provide important benefits to people and the environment. Wetlands improve water quality, reduce flood and storm damage, help control soil erosion, and provide important fish and wildlife habitat. Certain wetlands provide particularly important filtering functions because of their location between land and water. WBP acreage to the extent it otherwise meets statutory CRP criteria would only be eligible to be enrolled in the CRP during the final year of the WBP agreement. Further, only those WBP acres that are not classified as naturally occurring types 3 through 7 wetlands would be eligible to be enrolled in the CRP. Naturally occurring types 3 through 7 wetlands are considered permanently under water and, therefore, would continue to be ineligible.

The 1985 Act authorized the watershed areas of the Chesapeake Bay Region, the Great Lakes Region, the Long Island Sound Region, and other areas of special environmental sensitivity to be designated as conservation priority areas for a period of 5 years subject to redesignation. A number of these areas are approaching the expiration of their initial designation.

Prior to the 1996 amendments to the 1985 Act, the conservation priority area authority applied only to CRP. CRP's conservation priority area authority includes addressing ''actual and significant adverse water quality or habitat impacts related to agricultural production activities.'' The 1996 Act amendments also authorized conservation priority areas applied to the CRP, the Wetlands Reserve Program (WRP), and the Environmental Quality Incentives Program (EQIP) to ''assist * * * agricultural producers * * * to comply with nonpoint source pollution requirements * * * and other Federal and State environmental laws and to meet other conservation needs.''

In Section 1410.8, CCC proposes to restrict the total area in a State that may be designated as a conservation priority area to no more than 10 percent of the cropland in the State. When submitting requests for conservation priority designation, State FSA committees will be required to develop an evaluation and monitoring system to determine the effectiveness of designating a particular area a priority.

With respect to wetland enrollment, CCC proposes, in Section 1410.11, to provide CRP cost-share assistance under certain conditions. The decision to restore wetlands enrolled in the CRP is voluntary; however, offers for enrollment will be evaluated based on the level of restoration a producer is willing to install. CCC proposes to offer a financial incentive of up to 25 percent of the cost of restoring the hydrology in order to encourage participants to restore wetland acreage. This incentive is in addition to any applicable annual rental or cost share payments, not to exceed 50 percent of the land value. Producers who want to restore wetlands enrolled in the CRP may also elect to transfer acreage from the CRP to the Wetlands Reserve Program (WRP) if the acreage is suitable and approved by CCC. Transferred acreage shall be removed from the CRP, without penalty, effective the day an easement is filed.

To encourage producers to enroll certain acreage in the CRP, CCC proposes to offer financial incentives, in addition to the normal annual rental payment and cost-share assistance, to enroll filter strips, riparian buffers, field windbreaks, grass waterways, and acreage located in Environmental Protection Agency (EPA) designated wellhead protection areas. These acres offer an environmental targeting tool for water quality, wildlife habitat, soil erosion and have positive environmental impacts to much larger acreage. Accepting acreage suitable for these practices into the CRP results in

converting cropland acreage to areas of grass or trees that primarily: (1) reduce sedimentation, organic matter, and pollutants from subsurface runoff and subsurface flow; (2) reduce wind and water erosion; and, (3) enhance wildlife habitat. Therefore, the regulation at Section 1410.42 provides for a special monetary incentive to encourage enrolling such acreage in the CRP.

The 1985 Act, as amended, generally provided that no commercial use can be made of the enrolled CRP acreage but permits haying or grazing during droughts or similar emergencies. Accordingly, CCC proposes to limit haying and grazing of acreage enrolled in the CRP to these instances. As explained later, CCC seeks comments on development of periodic managed haying or grazing provisions.

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1997 (Public Law 104–180), provides that, for fiscal year 1997, none of the funds made available by that Act can be used to extend any existing or expiring contract in the CRP. Any acreage which a participant currently has in the program for which the participant is seeking continued enrollment shall compete for enrollment based on its environmental benefits relative to the cost of enrolling acreage in the program and shall be subject to the maximum payment rates, as determined by CCC, based on soil productivity and prevailing local cash or cash equivalent rental rates. Under the terms of the proposed rule, eligibility for new enrollment of acreage already enrolled in the CRP will be based on the same criteria for enrolling new acreage.

With respect to the unilateral early contract termination provisions for certain acreage authorized by the 1996 Act, CCC proposes to expand the list of ineligible acreage to include: (1) all wetlands, not just those enrolled under signup 8 and 9 criteria; (2) land subject to frequent flooding, as determined by CCC; (3) EPA designated wellhead protection areas; and (4) any wetland buffers that may be required according to the conservation plan to protect the functions and values of wetland acreage.

Interim rules published on May 8, 1995, and March 15, 1996, allowed for the early termination of some acreage from certain contracts. The 1996 Act amendments to the 1985 Act provided that for certain existing contracts CRP participants could unilaterally obtain an early release from contract obligations. Since the initial interim rule published in the Federal Register, CCC has modified ineligible land categories. In all cases, however, USDA has based its determinations on two factors: (1) redirecting CRP enrollment from productive, less erodible land to more environmentally sensitive acreage; and (2) weighing its responsibility of ensuring a grain supply that meets market demand. In comparison, CCC offers incentive payments for the enrollment of land to be devoted to certain environmental practices. In addition to the factors described above, in designating which practices are eligible for incentive payments, USDA also considers such other factors as necessary, including, but not limited to: (1) whether to encourage the adoption of a particular environmentally related management practice; (2) what rate is complementary to the adoption of such practice; and (3) any budget impacts.

The CRP will be carried out by CCC through the FSA using FSA State and county offices. State technical committees and local conservation districts will also be involved in the operation of the CRP. In order to maximize the environmental and conservation benefit for funds to be expended, conservation practices and the land for which offers may be accepted may vary as conditions change. However, CCC intends to rank competitively all offers based on the environmental benefits index taking into account the Government cost of the contract except for those contracts the acceptance of which would provide especially high environmental benefits. In those cases, CCC would accept those offers without additional evaluation when the requested rental rate is less than or equal to the maximum rental rate CCC is prepared to pay.

The proposed regulation provides, in Section 1410.31, that in determining acceptability of offers, the Secretary may use a formula based upon a number of environmental factors to help determine an environmental benefits index value for the management practice or practices offered for the program. Along with Government cost of enrolling the acreage, these environmental factors are used to construct an environmental benefits index value to compare offers of acreage providing multiple environmental benefits. CCC proposes to use a system that considers soil erosion, water quality, wildlife habitat, and cost while also considering other technical factors such as, but not limited to, recommendations of State technical committee, conservation priority areas, permanent wildlife habitat, tree plantings, wetlands functions and values, and conservation compliance requirements.

Section 1410.64 is proposed to comply with Section 226(c) of the Department of Agriculture Reorganization Act of 1994 that requires FSA, in establishing policies, priorities, and guidelines, to obtain the concurrence of the Natural Resources Conservation Service at national, State and, local levels.

Additionally, there are four issues for which CCC is seeking comment but which are not in the proposed rule. The first issue is in regard to whether and in what manner CRP acreage could be devoted to the production of biomass crops and whether such use would be consistent with the policy and provisions of the authorizing legislation. The Conference Report accompanying the 1996 Act indicated that ''the Managers recommend that the Secretary consider allowing biomass production as an acceptable cover crop practice during the period of a contract, provided that no harvesting is allowed until after the contract is completed or terminated.'' The purpose of such use of CRP acreage would be to pursue the cost-effective development and commercialization of integrated biomass energy systems to positively impact global climate change and to promote rural development.

The second issue is in regard to periodic nonemergency haying or grazing of CRP acreage. According to reports from various conservation and environmental groups, haying or grazing of CRP grass acreage every three years, if performed according to a plan, could benefit wildlife habitat and improve cover quality. However, several States have received approval to hay and graze CRP more often under emergency provisions. If managed haying or grazing is essential to the conservation benefit of a particular site and if such activity does not negatively affect the local livestock and forage markets, periodic nonemergency haying and grazing could possibly be authorized under the authority that the Secretary has to modify contracts to accomplish the goals of the program without interfering with the policy underlying the provision of the statute forbidding, generally, the commercial use of the CRP forage. Within those parameters, examples of periodic managed haying and grazing include, but are not limited to: (1) allowing haying and grazing once every 3 years as a management tool for wildlife habitat and for other purposes for certain CRP practices according to a plan with an associated payment reduction based on the value of the forage provided the applicant agrees to forego emergency haying and grazing provisions; (2) allowing haying and grazing once every 3 years as a management tool for wildlife habitat

and for other purposes for certain CRP practices according to a plan with an associated payment reduction equal to a percent of the annual CRP rental rate for haying and for grazing equal to an appropriate animal unit per month charge, provided the applicant agrees to forego ''emergency'' haying and grazing provisions if allowed thereafter for other participants; (3) allowing haying and grazing once every 3 years as a management tool for wildlife habitat and for other purposes for certain CRP practices according to a conservation plan without an associated payment reduction provided the applicant agrees to forego emergency haying and grazing provisions; or, (4) allowing haying every year of small amounts of acreage enrolled in CRP and devoted to specific uses such as filter strips or grass waterways under a conservation plan. Further, within the context or providing an essential conservation benefit of a particular site provided such activity does not negatively affect the local livestock and forage markets, public comment is sought regarding the utility and, if authorized, terms and frequency upon which periodic nonemergency haying and grazing would be conducted.

The third issue is in regard to whether and in what manner CCC should implement the conservation priority area authority applicable to CRP, WRP, and EQIP. It is recognized that the identified environmental problem in a geographic area may be best served by only one of the programs. However, in some cases, the coordinated efforts of two programs or all three programs may be desirable to address the identified environmental problem. Accordingly, CCC seeks comment on practical, cost-effective, suggestions to implement the conservation priority area authority, when needed, in a coordinated manner.

The fourth issue also is in regard to conservation priority areas. As previously indicated, a number of the conservation priority area designations are scheduled to expire in the near future. Among these are the Chesapeake Bay Region, the Great Lakes Region, and the Long Island Sound Region. CCC seeks comment on the most appropriate, cost-effective manner in which to consider redesignation of these and other conservation priority areas.

It has been determined that the comment period for this proposed rule will be 45 days as it was determined that a longer period would be contrary to the public interest. Limiting the period to 45 days will allow for the consideration of comments and publication of a final rule in time to hold a sign-up for the program in advance of the next spring planting season. Delay of the signup beyond that time would unduly inhibit the ability of the program to achieve the important public benefits which were the purpose of the recent amendments to the CRP and the other provisions of the 1996 Act dealing with conservation.

Comments on the proposed rule are solicited from interested parties and will be considered for a period of 45 days after the date of publication of this proposed rule in the Federal Register. Any comments that are offered during the public comment period will be evaluated in the development of the final rule.

List of Subjects in 7 CFR Parts 704 and 1410

Administrative practices and procedures, Base protection, Conservation plan, Contracts, Environmental indicators, Natural resources, and Technical assistance.

Accordingly, 7 CFR Parts 704 and 1410 are proposed to be amended as follows:

PART 704—[REMOVED]

1. Part 704 is removed.

2. Part 1410 is revised to read as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

Sec.

1410.1 Administration.
1410.2 Definitions.
1410.3 General Description.
1410.4 Maximum county average.
1410.5 Eligible persons.
1410.6 Eligible land.
1410.7 Duration of contracts.
1410.8 Conservation priority areas.
1410.9 Alley-cropping.
1410.10 Conversion to trees.
1410.11 Restoration of wetlands.
1410.12–1410.19 [Reserved]
1410.20 Obligations of participant.
1410.21 Obligations of the Commodity Credit Corporation.
1410.22 Conservation plan.
1410.23 Eligible practices.
1410.24–1410.29 [Reserved]
1410.30 Signup.
1410.31 Acceptability of offers.
1410.32 CRP contract.
1410.33 Contract modifications.
1410.34 Extended base protection.
1410.35–1410.39 [Reserved]
1410.40 Cost-share payments.
1410.41 Levels and rates for cost-share payments.
1410.42 Annual rental payments.
1410.43 Method of payment.
1410.44–1410.49 [Reserved]
1410.50 State enhancement program.
1410.51 Transfer of land.
1410.52 Violations.
1410.53 Executed CRP contract not in conformity with regulations.
1410.54 Performance based upon advice or action of the Department.
1410.55 Access to land under contract.
1410.56 Division of program payments and provisions relating to tenants and sharecroppers.
1410.57 Payments not subject to claims.
1410.58 Assignments.
1410.59 Appeals.
1410.60 Scheme or device.
1410.61 Filing of false claims.
1410.62 Miscellaneous.
1410.63 Permissive uses.
1410.64 Special concurrence requirements for certain functions.
1410.65 Paperwork Reduction Act assigned numbers.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

§ 1410.1 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. In the field, the regulations in this part will be administered by the State and county FSA committees (''State committees'' and ''county committees'', respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, FSA, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it, program benefits will not be provided.

(f) Notwithstanding other provisions of the preceding paragraphs of this section, the EI, suitability of land for permanent vegetative or water cover, factors for determining the likelihood of

improved water quality and adequacy of the planned practice to achieve desired objectives shall be determined by the Natural Resource Conservation Service (NRCS) or any other non-USDA source approved by NRCS, in accordance with the Field Office Technical Guide or other guidelines deemed appropriate by the NRCS, except that no such determination by NRCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

(g) State committees, with NRCS, may develop a State evaluation process to rank acreage based on State specific goals and objectives. Such State committees may choose between developing a State ranking process or utilizing the national ranking process. States' ranking processes shall be developed based on recommendations from State Technical committees, follow national guidelines, and be approved by the Deputy Administrator.

(h) CCC may consult with the Forest Service (FS) or the State forestry agency for such assistance as is determined by CCC to be necessary for developing and implementing conservation plans which include tree planting as the appropriate practice or as a component of a practice.

(i) CCC may consult with the Cooperative State Research, Education, and Extension Service to coordinate a related information and education program as deemed appropriate to implement the Conservation Reserve Program (CRP).

§ 1410.2 Definitions.

The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters or sugar cane planted or produced in a state or alfalfa and other multi year grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by CCC, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Alley-cropping means the practice of planting rows of trees surrounded by a strip of vegetative cover, alternated with wider strips of agricultural commodities planted in accordance with a conservation plan of operation approved by the local Conservation District and CCC.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended, and applicable commodity regulations.

Alternative perennials means woody species of plants grown on certain CRP acres, including, but not limited to shrubs, bushes, and vines.

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract which, subject to the availability of funds, is made to a participant to compensate such participant for placing eligible land in the CRP.

Applicant means a person who submits an offer to CCC to enter into a CRP contract.

Arid area means acreage located west of the 100th meridian that receives less than 25 inches of average annual precipitation.

Bid or offer means, unless the context indicates otherwise, if required by CCC, the per acre rental payment requested by the owner or operator in such owner's or operator's offer to participate in the CRP.

Conservation District means a political subdivision of a State, Native American Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions, and supporting information, for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover or other comparable measures.

Contour grass strip means a vegetation area that follows the contour of the land the width of which is determined by the appropriate Field Office Technical Guide and the designation of which is included as a contour grass strip by a conservation plan required under this part.

Contract Period means the period of time, of not less than 10 nor more than 15 years, the CRP contract is in effect.

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract.

Crop Acreage Base (CAB) means the acreage base for a crop on a farm which was established according to part 1413 of this chapter before enactment of the Federal Agriculture Improvement and Reform Act of 1996.

Cropland means land defined as cropland in accordance with the provisions of part 718 of this title, except for land in terraces that are no longer capable of being cropped.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or designee.

Designated 319 areas means areas approved by States under the Clean Water Act, as amended, administered by Environmental Protection Agency (EPA) and designated by the Deputy Administrator as eligible for entry into the CRP.

Easement means the real property interest designated as such acquired by FSA, NRCS, or CCC under this part, to be filed with the appropriate local or State governmental official of office.

Environmental Quality Incentives Program (EQIP) means the program authorized by the Food Security Act of 1985 (16 U.S.C. 3839aa–3839aa–7) in which eligible persons enter into contracts with CCC to address threats to soil, water, and related natural resources and for other purposes.

Erodibility index (EI) means the factor used to determine the inherent erodibility of a soil by dividing the potential average annual rate of erosion without management for each soil by the predetermined T value for the soil.

Federally owned land means land owned by the Federal Government or any department bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or croplines, except that croplines will be considered as separate fields only in cases where the eligible cropland and farming practices divide the land into manageable units and it is likely, as determined by CCC, that such cropline is not subject to change during the duration of the contract.

Field Office Technical Guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Field windbreak, shelterbelt, and living snowfence mean a vegetative barrier with a linear configuration composed of trees or shrubs which are designated as such practices in a

conservation plan and which are planted for the purpose of reducing wind erosion, snow control, wildlife habitat, and energy conservation.

Filterstrip means a strip or area of vegetation of a width determined appropriate for the purpose by the applicable Field Office Technical Guide.

Highly erodible land applies to certain acreage enrolled in CRP before January 1, 1995, and means land which is classified by NRCS as:

(1) Being predominantly Land Capability Classes II, III, IV, and V with:

(i) An average annual erosion rate of at least 2T or;

(ii) A serious gully erosion problem as determined by the Deputy Administrator;

(2) Being predominantly Land Capability Classes VI, VII, or VIII;

(3) If trees are to be planted under the conservation plan, eroding at the rate of at least 2T; or

(4) Having:

(i) An erodibility index equal to or greater than 8 for either wind or water erosion; and

(ii) An erosion rate greater than T.

Landlord means a person who rents or leases acreage to another person.

Local FSA office means the FSA office serving the area in which the FSA records are located for the farm or ranch.

Manageable unit means a part of a field that could be farmed in a normal manner as a self-contained unit.

Offer or bid means, unless the context indicates otherwise, if required by CCC, the per acre rental payment requested by the owner or operator in such owner's or operator's offer to participate in the CRP.

Operator means a person who is in general control of the farming operation on the farm, as determined by CCC.

Owner means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly and a person who has life-estate in a property.

Participant means an owner or operator or tenant who has entered into a contract. Payment period means the 10–15 year contract period for which the participant receives an annual rental payment.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a life span of 10 or more years, or trees.

Permanent wildlife habitat means a permanent vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other environmental concerns.

Practice means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to NRCS standards and specifications as a part of a conservation management system.

Predominantly highly erodible field means:

(1) A field in which at least 66⅔ percent of the land in such field is highly erodible; or

(2) A field on which the participant agrees to plant trees, as determined necessary by the Deputy Administrator to achieve overall program goals, which is at least 33⅓ percent highly erodible land.

Quota means the pounds allocated to a farm for a commodity as prescribed in the applicable program regulations.

Riparian buffer means areas adjacent to permanent or intermittent streams (as designated on United States Geological Survey topographic maps), permanent lakes, or wetlands that are influenced biologically and physically by the water regime of the water body. Riparian buffers shall be a minimum width as determined appropriate for the purpose of the practice by the Field Office Technical Guide.

Soil Loss Tolerance (T) means the maximum average annual erosion rate specified in the Field Office Technical Guide that will not adversely impact the long term productivity of the soil.

State Technical Committee means that committee established pursuant to 16 U.S.C. 3861 to provide information, analysis, and recommendations to the Department of Agriculture.

State Water Quality Priority Areas means any area designated by the State committee and NRCS, in consultation with the State Technical Committee where agricultural nonpoint source pollutants or agricultural point source pollutants contribute or create the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State water quality laws. These areas may include areas designated under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) as water quality protection areas, sole source aquifers or other designated areas that result from agricultural nonpoint sources of pollution. Acreage in these areas could be determined eligible as conservation priority areas.

Technical assistance means the assistance provided in connection with the CRP to owners or operators by NRCS, FS, or another source as approved by the NRCS or FS, as appropriate, in classifying cropland, developing conservation plans, determining the eligibility of land, and implementing and certifying practices, and forestry issues.

Water bank program (WBP) means the program authorized by the Water Bank Act of 1970 (16 U.S.C. 1301–1311) in which eligible persons enter into 10 year agreements with NRCS to preserve, restore, and improve wetlands.

Water cover means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

Wellhead means the actual location of a well, as determined by CCC, for water being drawn for public use, as defined for public use by the Safe Drinking Water Act, as amended.

Wetlands Reserve Program (WRP) means the program authorized by the Food Security Act of 1985 (16 U.S.C 3837–3837f) in which eligible persons enter to long-term agreements to restore and protect wetlands.

§ 1410.3 General description.

(a) Under the CRP, the CCC will enter into contracts with eligible producers to convert eligible land to a conserving use for a minimum of 10 years in return for financial and technical assistance.

(b) A conservation plan for eligible acreage shall be approved by the Conservation District in which the lands are located.

(c) The objectives of the CRP are to cost effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including encouraging more permanent conservation practices and tree planting.

(d) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental payments, or tax benefits from a State, subdivision of such State, or a private organization in return for enrolling lands in CRP. However, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any other provision of law, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part or otherwise exceed the cost of the practice, as determined by CCC.

§ 1410.4 Maximum county acreage.

The maximum acreage which may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county of which no more than 10 percent of the cropland in the county may be subject, in the aggregate, to a CRP or WRP easement, unless CCC determines that such action would not adversely affect the local economy of the county. This restriction on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Eligible persons.

(a) In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner, operator, or tenant of eligible cropland and:

(1) If an operator of eligible cropland must have operated such cropland for at least 1 year prior to the close of the applicable signup period and must provide satisfactory evidence that such operator will be in control of such cropland for the full term of the CRP contract period;

(2) If an owner of eligible cropland, must have owned such cropland for at least 1 calendar year prior to the close of the applicable signup period, unless:

(i) The new owner acquired such cropland by will or succession as a result of the death of the previous owner;

(ii) The only ownership change in the 1-year period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with State law; or

(iii) As determined by the Deputy Administrator, the circumstances of the acquisition are such as present adequate assurance that the new owner of such cropland did not acquire such cropland for the purpose of placing it in the CRP; or

(3) If a tenant, the tenant is a participant with an eligible owner or operator.

(b) Notwithstanding paragraph (a) of this section, under continuous signup provisions authorized by § 1410.30, an otherwise eligible person must have owned or operated, as appropriate, the eligible cropland for at least 1 year prior to submission of a bid or offer.

§ 1410.6 Eligible land.

(a) Except as otherwise provided in this section, in order to be eligible to be placed in the CRP, land must:

(1) Have been annually planted or considered planted to an agricultural commodity in 2 of the 5 most recent crop years, as determined by the Deputy Administrator;

(2) Be physically and legally possible to be planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator; and

(3) Except as provided in paragraph (b) of this section, if in a redefined field, be a manageable unit which meets the minimum acreage requirements, as determined by the Deputy Administrator, for the county.

(b) A field or portion of a field determined to be suitable for use as a permanent wildlife habitat, filterstrip, riparian buffer, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, or vegetation on salinity producing areas, and any area determined eligible for the CRP based on wetland or wellhead protection area criteria shall be eligible to be placed in the CRP, even if it does not meet the definition of a manageable unit. A field or portion of a field may be considered to be suitable for use as a filterstrip or riparian buffer only if it, as determined by NRCS:

(1) Is located adjacent to a stream, other water of a permanent nature (such as a lake, pond, or wetland), sinkholes, or wetland excluding such areas as gullies or sod waterways; and

(2) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing pollutant loadings or sediment that otherwise would be delivered to the adjacent stream or waterbody.

(c) (1) A field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by NRCS, may be eligible to be placed in the CRP, even if the field does not meet the requirement of paragraph (a)(3) of this section.

(2) In order for land to be eligible for enrollment in the CRP under this paragraph (c), such land must otherwise meet the requirements of paragraph (a) of this section.

(3) Such land must in addition:

(i) Be expected to flood a minimum of once every 10 years; and

(ii) Have evidence of scour erosion as a result of such flooding.

(4) To the extent practicable, only cropland areas of a field may be enrolled in the CRP under this paragraph. The entire cropland area of an eligible field may be enrolled if:

(i) The size of the field is 9 acres or less; or

(ii) More than one third of the cropland in the field is land which lies between the water source and the inland limit of the scour erosion.

(5) If the full field is not eligible for enrollment under this paragraph, the portion of the field eligible for enrollment shall be that portion of the cropland between the water body and the inland limit of the scour erosion together with, as determined by the Deputy Administrator, additional areas which would otherwise be unmanageable and would be isolated by the eligible areas.

(6) Cropland approved for enrollment under this paragraph shall be planted to an appropriate tree species or mix thereof according to the Field Office Technical Guide, unless tree planting is determined to be inappropriate by NRCS in consultation with FS, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover in accordance with the Field Office Technical Guide.

(d) Notwithstanding paragraph (a)(3) of this section, the following land may also, as determined by the Deputy Administrator, be considered eligible for the CRP under the provisions of this part, provided that all other provisions of paragraph (a) of this section are met:

(1) Land contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production so long as water quality objectives, with respect to such land, cannot be obtained under other Federal programs, including but not limited to EQIP.

(2) Land devoted to living snowfences, grass waterways, field windbreaks, wildlife habitat, shelterbelts, filterstrips, or riparian buffers;

(3) Land devoted to certain covers, as determined by the Deputy Administrator, which are established and maintained according to the Field Office Technical Guide providing such acreage is not under life-span requirements established under any other Federal Programs; or

(4) Non-irrigated or irrigated cropland which produces or serves as the recharge area, as determined by the Deputy Administrator, saline seeps, or acreage which is functionally related to such saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface.

(e) Federal lands, lands acquired by an agency of the Federal Government, or by a quasi-federal entity are ineligible for the CRP.

(f) Except as provided in paragraph (h) of this section and unless otherwise approved by the Deputy Administrator, land otherwise eligible for the CRP shall not be eligible if the land is subject to a deed or other restriction prohibiting

the production of agricultural commodities.

(g) Acreage currently enrolled in the CRP may be eligible to be reoffered for enrollment if the scheduled expiration date of the current CRP contract is to occur before the available effective date of a new CRP contract, as determined by the Deputy Administrator, and if the acreage is otherwise eligible according to this part, as determined by the Deputy Administrator.

(h) Except as otherwise provided in this section, eligible land must be:

(1) Land with an EI greater than or equal to 8, calculated by using the weighted average of the EI's of Soil Map Units within a field;

(2) Land having evidence of scour erosion caused by out-of-bank water flows;

(3) Land within a public wellhead protection area established by the EPA or in a Hydrologic Unit Area approved by the Secretary;

(4) Land within a designated conservation priority area;

(5) A field or part of a field determined suitable for filter strip, grass waterway, field windbreak, shelterbelt, living snowfence, or vegetation on salinity producing areas, including any applicable recharge areas;

(6) A field or part of a field determined suitable for riparian buffer, in which case the provisions of paragraph (a) need not apply;

(7) Acreage designated a farmed wetland by NRCS according to part 12 of this title; or

(8) Acreage enrolled in the WBP, in which case the provisions of paragraph (a) of this section need not apply, provided that WBP land may not be enrolled unless:

(i) The acreage is in the final year of the WBP agreement;

(ii) The acreage is not classified as naturally occurring type 3 through 7 wetlands, as determined by CCC including acreage protected by a Federal agency easement or mortgage restriction (types 3 through 7 wetlands that are normally artificially flooded shall not be precluded from eligibility);

(iii) The acreage meets statutory criteria for enrollment; and

(iv) Enrollment in the CRP would cost-effectively enhance the environmental benefits of the site, as determined by CCC.

§ 1410.7 Duration of contracts.

(a) Except as provided in paragraph (b) of this section, contracts under this part shall be 10 years in duration.

(b) In the case of land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors under the original terms of a contract subject to this part or for land devoted to such use under a contract modified under § 1410.10, the participant may specify the duration of the contract provided that such contracts must be at least 10 years and no more than a total of 15 years in length.

(c) Within the constraints of paragraphs (a) and (b) of this section, all contracts shall expire on September 30 of the appropriate year.

§ 1410.8 Conservation priority areas.

(a) The Deputy Administrator may designate other areas of special environmental sensitivity as conservation priority areas.

(b) State FSA committees, in consultation with NRCS and State Technical Committees, may submit an application within guidelines established by the Deputy Administrator for designation of other areas to the Deputy Administrator. Such applications should contain clearly defined conservation and environmental objectives and analysis how CRP can cost-effectively address such objectives. Generally, the total acreage of conservation priority areas, in aggregate, shall not total more than 10 percent of the cropland in a State, as determined by CCC.

(c) Watersheds shall be eligible for designation as a priority area only if the watershed has actual significant adverse water quality or wildlife habitat impacts related to activities of agricultural production.

(d) Conservation priority area designations expire after 5 years unless redesignated, except they may be withdrawn:

(1) Upon application by the appropriate State water quality agency; or

(2) By the Secretary, if such areas no longer contain actual and significant adverse water quality, wildlife habitat, or other environmental impacts in association with agricultural production activities.

(e) In those areas designated as priority areas, under this section, special emphasis will be placed on maximizing water quality, including assisting agricultural producers to comply with nonpoint source pollution requirements, or wildlife habitat benefits through the implementation of the CRP by cost-effectively promoting a significant level of enrollment of lands within such designated areas, as determined by the Deputy Administrator, which are determined to be appropriate and consistent with the purposes of the program.

§ 1410.9 Alley-cropping.

(a) Alley-cropping on CRP land may be permitted by CCC if:

(1) The land is planted to, or converted to, hardwood trees in accordance with § 1410.10;

(2) Agricultural commodities are planted in accordance with an approved conservation plan in close proximity to such hardwood trees; and

(3) The owner and operator of such land agree to implement appropriate conservation measures on such land.

(b) CCC may solicit bids for alley-cropping permission for CRP land. Annual rental payments for the term of any contract modified under this section shall be reduced by at least 50 percent of the original amount of the total rental payment in the original contract and total annual rental payments over the term of any contract modified under this section may not exceed the total annual rental payments specified in the original contract.

(c) The actual reduction in rental payment will be determined by CCC, based upon criteria, such as percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping.

(d) The area available for cropping will be chosen according to the Field Office Technical Guide and will be farmed in accordance with an approved conservation plan so as to minimize erosion and degradation of water quality during those years when the areas are devoted to an agricultural commodity.

§ 1410.10 Conversion to trees.

An owner or operator who has entered into a contract prior to November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, which is devoted to permanent vegetative cover, from such cover to hardwood trees (including alley cropping where permitted by CCC), windbreaks, shelterbelts, or wildlife corridors.

(a) With respect to any contract modified under this section, the participant may elect to extend such contract in accordance with the provisions of § 1410.7 (b).

(b) With respect to any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner of such land must agree to maintain such plantings for a time period established by the Deputy Administrator.

(c) CCC shall, as it determines appropriate, pay up to 50 percent of the eligible cost of establishing new conservation measures authorized under

this section, except that the total cost-share paid with respect to such contract, including cost-share assistance paid when the original cover was established, may not exceed the amount by which CCC would have paid had such land been originally devoted to such new conservation measures.

(d) With respect to any contract modified under this section, the participant must participate in the Forest Stewardship Program (16 U.S.C. 2103a).

§ 1410.11 Restoration of wetlands.

(a) An owner or operator who entered into a contract under part 704 of this chapter prior to November 28, 1990, on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, apply to transfer such eligible acres subject to such contract, which are devoted to an approved cover, from the CRP to the WRP. Transferred acreage shall be terminated from the CRP effective the day an easement is filed. Participants will receive a prorated CRP annual payment for that part of the year the acreage was enrolled in the CRP according to § 1410.42. Refunds of cost-share payments or any applicable incentive payments need not be required.

(b) An owner or operator may, if approved by CCC, restore suitable acres to wetlands while under the CRP without Federal cost-share assistance if CRP cost share assistance was previously provided, since water is an approved cover. The approved restoration shall become a part of the conservation plan for the contracted area.

(c) An owner or operator who has enrolled acreage in the CRP under the wetland eligibility criteria may restore suitable acres to wetlands with cost-share assistance. In addition to the cost-share limitation in § 1410.41, an additional rental amount as a financial incentive may be provided to encourage wetland restoration.

§§ 1410.12—1410.19 [Reserved]

§ 1410.20 Obligations of participant.

(a) All participants subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan which is part of such contract in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control;

(3) Establish temporary vegetative cover when required by the conservation plan or, as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established;

(4)(i) Reduce the aggregate total allotments and quotas for the contract period for each farm which contains land subject to such CRP contract by an amount based upon the ratio between the acres in the CRP contract and the total cropland acreage on such farm. Allotments and quotas reduced during the contract period shall be returned at the end of the contract period in the same amounts as would apply had the land not been enrolled in the CRP unless CCC approves, in accordance with the provisions of § 1410.34, an extension of such protection; and

(ii) reduce Agricultural Market Transition Act contract acres enrolled under part 1412 of this chapter or CRP acres enrolled under this part to the extent that the total of such acres exceeds the cropland on the farm;

(5) Not produce an agricultural commodity on highly erodible land, in a county which has not met or exceeded the acreage limitation under § 1410.4, which was acquired on or after November 28, 1990, unless such land, as determined by CCC, has a history in the most recent five year period of producing an agricultural commodity other than forage crops;

(6) Comply with all requirements of part 12 of this title;

(7) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time in accordance with instructions issued by the Deputy Administrator;

(8) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the CRP contract period;

(9) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(10) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover is adequately protected, taking into consideration the needs of water quality and wildlife, as determined by CCC; and

(11) Be jointly and severally responsible for compliance with such contract and the provisions of this part and for any refunds or payment adjustments which may be required for violations of any of the terms and conditions of the CRP contract and provisions of this part except that for acreage enrolled after January 1, 1995, a participant shall only be jointly and severally liable for contract compliance when the share of the payment attributable to the participant is greater than zero

(b) [Reserved].

§ 1410.21 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this part;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP contract;

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP contract; and

(d) Permit grazing on CRP land where the grazing is incidental to the gleaning of crop residues on fields where the contracted land is located. Such incidental grazing shall be limited to the 7-month period in which grazing of conservation use acreage was allowed, as determined by CCC, in a State under the provisions of the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*), or after the producer harvests the grain crop of the surrounding field. Further, CCC may provide approval of the incidental grazing of the CRP only in exchange for an applicable reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

§ 1410.22 Conservation plan.

(a) The applicant shall develop and submit a conservation plan which is acceptable to NRCS and is approved by the Conservation District for the land to be entered in CRP.

(b) The practices included in the conservation plan and agreed to by the participant must cost-effectively achieve the reduction in erosion necessary to maintain the productive capability of the soil, improvement in water quality, protection for wildlife or wetlands, protection of a public well head, or

achieve other environmental benefits as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the conservation plan. Such tree planting plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) All conservation plans and revisions of such plans shall be subject to the approval of CCC and the Conservation District.

§ 1410.23 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all quantity and quality standards needed to cost-effectively:

(1) Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, forest trees, permanent wildlife habitat, field windbreaks, and shallow water areas for wildlife;

(2) Meet other environmental benefits, as applicable, for the contract period; and

(3) Accomplish other purposes of the program.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by the Deputy Administrator for the enhancement of wildlife, improvement of water quality, or otherwise, provided further that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes.

§§ 1410.24–1410.29 [Reserved]

§ 1410.30 Signup.

Offers for contracts shall be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems desirable.

§ 1410.31 Acceptability of offers.

(a) Except as provided in paragraph (c) of this section, producers may submit bids for the amounts in dollars they are willing to accept as rental payments to enroll their acreage in the CRP. The bids shall, to the extent practicable, be evaluated on a competitive basis in which the bids selected will be those where the greatest environmental benefits are generated for the Federal dollars expended provided the bid is not in excess of the maximum acceptable payment rate established for the county by or for the Deputy Administrator in accordance with established procedure.

(b) In evaluating contract offers, different factors, as determined by CCC, may be established from time to time for priority purposes to accomplish the goals of the program. Such factors may include, but are not limited to:

(1) Soil erosion;

(2) Water quality (both surface and ground water);

(3) Wildlife benefits;

(4) Conservation priority area designation for selection as provided by § 1410.8;

(5) Soil productivity;

(6) Conservation compliance considerations;

(7) Likelihood to remain in conserving uses beyond the contract period, including tree planting and permanent wildlife habitat;

(8) State water quality priority areas; and

(9) Cost of enrolling acreage in the program.

(c) Acreage determined eligible for continuous signup, as provided in § 1410.30, shall be automatically accepted in the program if the:

(1) Land is eligible in accordance with the provisions of § 1410.6;

(2) Applicant is eligible in accordance with the provisions of § 1410.5; and

(3) Applicant accepts either the maximum payment rate CCC is willing to offer to enroll the acreage in the program or a lesser amount.

§ 1410.32 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract will be comprised of:

(1) The terms and conditions for participation in the CRP;

(2) The conservation plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c)(1) In order to enter into a CRP contract, the applicant must submit an offer to participate at the local FSA office as provided in § 1410.30;

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC. The applicant shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The applicant; and

(2) The owners of the cropland to be placed in the CRP, if applicable.

(e) The Deputy Administrator or designee is authorized to approve CRP contracts on behalf of CCC.

(f) As determined by CCC, CRP contracts may be terminated before the expiration date when:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant(s) voluntary request in writing to terminate the contract and obtain the approval of CCC according to terms and conditions as determined by CCC;

(3) The participant(s) are not in compliance with the terms and conditions of the contract;

(4) Acreage is enrolled in another State, Federal or local conservation program;

(5) The CRP practice fails after a certain time period, as determined by the Deputy Administrator, and the county committee determines the cost of restoring the cover outweighs the benefits received from the restoration; or

(6) The CRP contract was approved based on erroneous eligibility determinations.

(g)(1) Contracts for land enrolled in CRP before January 1, 1995, which have been in effect for at least 5 years may be unilaterally terminated by all CRP participants on a contract except for contract acreage:

(i) Located within an average of 100 feet of a perennial stream or other permanent waterbody;

(ii) On which a CRP easement is filed;

(iii) That is considered to be a wetland by NRCS;

(iv) Located within an EPA designated wellhead protection area;

(v) That is subject to frequent flooding;

(vi) That may be required to serve as a wetland buffer according to the Field Office Technical Guide to protect the functions and values of a wetland; or

(vii) On which there exist one or more of the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the conservation plan:

(A) Grass waterways;

(B) Filter strips;

(C) Shallow water areas for wildlife;

(D) Bottomland timber established on wetlands;

(E) Field windbreaks; and

(F) Shelterbelts.

(2) For any land for which an early termination is sought, the land must have an EI of 15 or less.

(3) With respect to terminations under this paragraph:

(i) The termination shall become effective 60 days from the date the

participant(s) submits notification to CCC of the participant's desire to terminate the contract;

(ii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods providing the acreage otherwise meets the eligibility criteria established for that signup; and

(iii) Participants shall be required to meet conservation compliance requirements of part 12 of this title to the extent applicable to other land.

(h) Except as approved by CCC, where the new owner is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract. CCC, in its discretion, may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair program operations. Further, no refund of rental and cost-share payments shall be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the Fish and Wildlife Service.

§ 1410.33 Contract modifications.

(a) By mutual agreement between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity under extraordinary circumstances during a crop year on all or part of the land subject to the CRP contract as determined by the Deputy Administrator;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made available to the extent otherwise allowed by law.

§ 1410.34 Extended base protection.

(a) In the final year of the contract, participants may, subject to approval by the Deputy Administrator, request to extend the preservation of cropland base, quota, and allotment history for 5 years, without payment. Such approval may be given by CCC only if participants agree to continue for that period to abide by the terms and conditions which applied to the relevant contract relating to the conservation of the property for the term in which payments were to be made.

(b) Where such an extension is approved, no additional cost share, annual rental, or bonus payment shall be made that would not have been made under the original contract for its original term.

(c) Haying and grazing of the acreage subject to such an extension may be permitted during the extension period, except during any consecutive 5-month period between April 1 and October 31 of any year as shall be established by the State committee. In the event of a natural disaster, however, CCC may permit unlimited haying and grazing of such acreage.

(d) In the event of a violation of any CRP contract extended under this section, CCC may reduce or terminate the amount of cropland base, quota, and allotment history otherwise preserved under the contract or under an extension of the contract.

§§ 1410.35–1410.39 [Reserved]

§ 1410.40 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, cost-share payments may be made under the CRP only for the cost-effective establishment or installation of an eligible practice.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices which have been previously established, or for which such owner or operator has received cost-share assistance from the Department or other Federal agency.

(d) Except as provided for under § 1410.10(c), cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhanced water quality, wildlife habitat, or increased protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount which, when added to assistance from other sources, exceeds the cost of the practices.

(f) In the case of land devoted to hardwood trees, windbreaks, shelterbelts, or wildlife corridors under a contract subject to this part or in the case of land converted to such use under § 1410.10, CCC may pay up to 50 percent of appropriate costs, as determined by CCC, to the participant for the estimated costs of maintaining such plantings, including the cost of replanting if such plantings are lost for reasons beyond the control of the participant, during not less than the 2-year nor more than the 4-year period commencing on the date of such plantings.

(g) CCC shall not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made on land subject to such contract.

§ 1410.41 Levels and rates for cost-share payments.

(a) As determined by the Deputy Administrator, CCC may not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan, except that CCC may allow cost-share payments for maintenance costs to the extent required by § 1410.40(f) and CCC may determine the period and amount of such cost-share payments.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a county or counties as determined by the Deputy Administrator.

(c) A rental amount as a financial incentive, in an amount up to 25 percent of restoring the hydrology on the site, may be offered to participants that restore eligible wetlands in accordance with the provisions of § 1410.11.

§ 1410.42 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with

such time schedule as may be agreed upon and specified in the CRP contract.

(b) The annual rental payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(c) The maximum amount of rental payments which a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at part 1400 of this chapter shall be applicable in making certain eligibility and ''person'' determinations as they apply to payment limitations under this part, except that the regulations set forth in part 795 of this title may be applied to contracts approved before August 1, 1988.

(d) In the case of a contract succession, annual rental payments shall be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments shall be divided based on the actual days of ownership of the property as reflected in applicable appropriately filed land records.

(e) CCC may reject any and all offers received from applicants who had previously entered into CRP contracts with CCC if the total annual rental payments due under such prior contracts (excluding contracts entered into in accordance with the provisions of § 1410.51 plus the total annual rental payments called for in the offer) exceed $50,000.

(f) CCC shall, when appropriate, prepare a schedule for each county that shows the rental rate CCC may pay for different soil types. As determined by the Deputy Administrator, such schedule shall be calculated based on the relative productivity of soils within the county using NRCS data and local FSA average dryland cash rental estimates. The schedule shall be posted in the local FSA office. As determined by the Deputy Administrator, the schedule shall indicate, when appropriate, that:

(1) Contracts offered by producers who request rental payments greater than the schedule for their soil(s) will be rejected;

(2) Offers of contracts that are expected to provide especially high environmental benefits, as determined by the Deputy Administrator, may be the accepted without further evaluation when the requested rental rate is less than or equal to the corresponding soil(s) schedule; and

(3) Remaining contracts offered shall be ranked competitively based on the environmental benefits index, taking into account the Government cost of the contract, in order to provide the most cost effective environmental benefits, as determined by the Deputy Administrator.

(g) Additional financial incentives may be provided to producers offering contracts expected to provide especially high environmental benefits through an increased annual rental payment of not more than 25 percent as determined by the Deputy Administrator.

§ 1410.43 Method of payment.

Except as provided in § 1410.50, payments made by CCC under this part may be made in cash, in kind, in commodity certificates, or in any combination of such methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§§ 1410.44–1410.49 [Reserved]

§ 1410.50 State enhancement program.

(a) For contracts to which a State, political subdivision, or agency thereof has succeeded in connection with an approved conservation reserve enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payments per year that a person may receive under this part shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such program carried out by such State, political subdivision, or agency thereof which has been approved by the Secretary.

(b) CCC may enter into other agreements with States, as approved by the Secretary, to utilize the CRP to further the conservation and environmental objectives of that State and the Nation.

§ 1410.51 Transfer of land.

(a) (1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, as determined by the Deputy Administrator, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC with respect to such transferred land.

(2) With respect to the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations under the CRP contract of the previous participant.

(3) If the new owner or operator becomes a successor to a CRP contract with CCC:

(i) Cost-share payments shall be made to the participant, past or present, who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.42.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Must forfeit all rights to any future payments with respect to such acreage; and

(2) Shall comply with the provisions of § 1410.32(h).

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the participants on such contract, such operator may, as permitted by CCC, continue to receive payments provided for in such contract so long as:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.52 Violations.

(a) (1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this paragraph:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together with interest; and

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(c) CCC may also terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

(d) CCC may reduce a demand for a refund under this section to the extent

CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.53 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with the provisions of this part, the provisions of the regulations shall prevail.

§ 1410.54 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1410.55 Access to land under contract.

(a) Any representative of the Department, or designee thereof, shall be provided by the applicant or participant as the case may be, with access to land which is:

(1) The subject of an application for a program under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the CRP.

§ 1410.56 Division of program payments and provisions relating to tenants and sharecroppers.

(a) Payments received under this part shall be divided in the manner specified in the applicable contract or agreement and CCC shall ensure that producers who would have shared in the risk of producing crops on land subject to such contract and who continue to maintain an interest in such acreage, receive treatment deemed to be equitable. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a tenant's eligibility and there is insufficient evidence to indicate whether a tenant does or does not have an interest in the acreage.

(b) CCC may remove an operator or tenant from a CRP contract when the operator or tenant:

(1) Requests, in writing to be removed from CRP–1;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the contract period and the Administrator of the estate fails to succeed to the contract within a period of time determined acceptable by the Deputy Administrator; or

(4) For acreage enrolled under contracts executed after January 1, 1995, if a court-ordered directive to remove the operator or tenant is received by FSA.

(c) For acreage enrolled under contracts executed after January 1, 1995, in addition to the provisions in paragraph (b) of this section, tenants shall maintain their tenancy throughout the contract period in order to remain on a contract. If a tenant fails to maintain their tenancy under applicable State law, CCC may remove a tenant from a contract. CCC shall assume the tenancy is being maintained unless notified otherwise by a CRP participant on the applicable contract.

§ 1410.57 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1410.58 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter, except that assignments may also be made to secure or pay pre-existing indebtedness.

§ 1410.59 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant or person seeking participation may appeal or request reconsideration of an adverse determination rendered with regard to such participation in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS concerning land classification, erosion rates, water quality ratings or other technical determinations may be appealed in accordance with procedures established under part 614 of this title or otherwise established by NRCS.

§ 1410.60 Scheme or device.

(a) If it is determined by CCC that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payments otherwise due or paid such person during the applicable period may be withheld or required to be refunded with interest thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or land rental payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the responsibilities under this part shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future, or conditional interest, reversionary interest, or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest shall be considered a scheme or device under this section.

§ 1410.61 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the program year in which the false information or claim was filed and the contract may be terminated in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld. The remedies provided for in this section shall be in addition to any and all other remedies, criminal and/or civil that may apply.

§ 1410.62 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payment due under this part shall be paid to the participant's successor in accordance with the provisions of part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly-erodible land and wetland conservation and

payments that otherwise could be made under this part may be withheld to the extent provided for in part 12 of this title.

(c) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(d) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of CRP acreage due to foreclosure and the new owner chooses not to continue the contract according to § 1410.51, refunds shall not be required from any participant on the contract.

(e) Crop insurance requirements in part 1405 of this chapter apply to all acreage initially enrolled after October 12, 1994, as determined by the Deputy Administrator.

(f) Land enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, shall be removed from such classification upon a determination by the county committee that such land no longer meets the conditions identified in part 718 of this title.

(g) Research projects may be proposed by the State committee and authorized by the Deputy Administrator to address defined conservation or land use problems, water quality issues, or wildlife habitat. The research projects must include objectives that are consistent with this part, involve land that otherwise meets required eligibility criteria, provide beneficial information on economically and environmentally sound agricultural practices, not adversely affect local agricultural markets, and be conducted and monitored by a bona fide research entity.

§ 1410.63 Permissive uses.

Unless otherwise specified by the Deputy Administrator, no crops of any kind may be planted or harvested from designated CRP acreage during the contract period.

§ 1410.64 Special concurrence requirements for certain functions

In establishing policies, priorities, and guidelines, FSA shall obtain the concurrence of the NRCS at national, State, and local levels.

§ 1410.65 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under provisions 44 U.S.C. Chapter 35 and OMB number 0560–0125 has been assigned.

Signed at Washington, DC, on September 17, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency, and Acting Executive Vice President, Commodity Credit Corporation.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Policy Statement request for public comment.

SUMMARY: The NRC is seeking comment on the draft statement of policy regarding its expectations for, and intended approach to, its power reactor licensees as the electric utility industry moves from an environment of rate regulation toward greater competition. The NRC is concerned that rate deregulation and disaggregation resulting from various restructurings involving power reactor licensees could have adverse effects on the protection of public health and safety.

DATES: The public is invited to submit comments on this draft Policy Statement by December 9, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date. On the basis of the submitted comments, the Commission will determine whether to modify the draft Policy Statement before issuing it in final form.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, Attention: Docketing and Service Branch.

Deliver Comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1255, e-mail RSW1@nrc.gov; or, for the antitrust aspects of this policy statement, William Lambe, telephone (301) 415–1277, e-mail WML@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose

The purpose of this draft policy statement is to provide a discussion of the NRC's concerns regarding the potential safety impacts on NRC power reactor licensees resulting from the economic deregulation and restructuring of the electric utility industry and the means by which NRC intends to address those concerns. This draft policy statement recognizes the changes that are occurring in the electric utility industry and the importance these changes may have for the NRC and its licensees. The NRC's principal mission is to regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of the public health and safety, to promote the common defense and security, and to protect the environment. As part of carrying out this mission, the NRC must monitor licensee activities and any changes in licensee activities, as well as external factors that may affect the ability of individual licensees to safely operate and decommission licensed power production facilities.

II. Background

The electric utility industry is entering a period of economic deregulation and restructuring which is intended to lead to increased competition in the industry. Increasing competition may force integrated power systems to separate (or ''disaggregate'') their systems into functional areas. Thus, some licensees may divest electrical generation assets from transmission and distribution assets by forming separate subsidiaries or even separate companies for generation. Disaggregation may involve utility restructuring, mergers, and corporate spin-offs that lead to changes in owners or operators of licensed power reactors and may cause some licensees, including owners, to cease being an ''electric utility'' as defined in 10 CFR 50.2.[1] Such changes may affect the

[1] Section 50.2 defines ''electric utility'' as ''any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation and distribution subsidiaries, public

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licensing basis under which the NRC originally found a licensee to be financially qualified to construct, operate or own its power plant, as well as to accumulate adequate funds to ensure decommissioning at the end of reactor life.

Rate regulators have typically allowed an electric utility to recover prudently incurred costs of generating, transmitting, and distributing electric services. Consequently, in 1984, the NRC eliminated financial qualifications reviews at the operating license stage for those licensees that met the definition of ''electric utility'' in 10 CFR 50.2 (49 FR 35747; Sept. 12, 1984). The NRC based this decision on the assumption that ''the rate process assures that funds needed for safe operation will be made available to regulated electric utilities'' (49 FR at 35750). However, the NRC recognized that financial qualifications reviews for operating license applicants might be appropriate in particular cases where, for example, ''the local public utility commission will not allow the total cost of operating the facility to be recovered through rates'' (49 FR at 35751). The Commission also has expressed potential concern with various State proposals to implement economic performance incentive programs.[2]

In its 1988 decommissioning rule, the NRC again distinguished between electric utilities and other licensees by allowing ''electric utilities'' to accumulate funds for decommissioning over the remaining terms of their operating licenses. NRC regulations require its other licensees (with the added exception of State and Federal government licensees of certain facilities) to provide funding assurance for the full estimated cost of decommissioning, either through full up-front funding or by some allowable guarantee or surety mechanism.

A discussion of the current and future NRC review process will be contained in two Standard Review Plans that the NRC plans to issue—one for financial qualifications and decommissioning funding assurance reviews and the other for antitrust reviews. In addition, the NRC issued an Administrative Letter on June 21, 1996, that informed power reactor licensees of their ongoing responsibility to inform, and obtain advance approval from the NRC for any changes that would constitute a transfer of the license, directly or indirectly, through transfer of control of the NRC license to any person pursuant to 10 CFR 50.80. This administrative letter also reminded addressees of their responsibility to assure that information regarding a licensee's financial qualifications and decommissioning funding assurance which may have a significant implication for public health and safety is promptly reported to the NRC.

III. Policy Statement

The NRC is concerned with the potential impact of utility restructuring on public health and safety. The NRC has not found a consistent relationship between a licensee's financial health and general indicators of safety such as the NRC's Systematic Assessment of Licensee Performance (SALP). Thus, the NRC has traditionally relied on its inspection process to indicate when safety performance has begun to show adverse trends. Based on inspection program results, the NRC can take appropriate action, including, ultimately, plant shutdown, to protect public health and safety. However, if a plant is permanently shut down, that plant's licensee(s) may no longer have access to adequate revenues or other sources of funds for decommissioning the facility. If rate deregulation and organizational divestiture occur concurrently with the shutdown of a nuclear plant either by NRC action or by a licensee's economic decision, that licensee may not be able to provide adequate assurance of decommissioning funds. Thus, the NRC believes that its concerns with deregulation and restructuring lie primarily in the area of adequacy of decommissioning funds, although it is also concerned with the potential effect that economic deregulation may have on operational safety.

As the electric utility industry moves from an environment of substantial economic regulation to one of increased competition, the NRC is concerned about the pace of restructuring and rate deregulation. Approval of organizational and rate deregulation changes may occur rapidly without the NRC's knowledge. The pace and degree of such changes could affect the factual underpinnings of the NRC's previous conclusions that power reactor licensees can reliably accumulate adequate funds for operations and decommissioning over the operating lives of their facilities. For example, rate deregulation could create situations where a licensee that previously qualified as an ''electric utility'' under 10 CFR 50.2 may, at some point, no longer qualify for such status. At that point, the NRC may require licensees to submit proof pursuant to 10 CFR 50.33(f)(4) that they remain financially qualified and will require them to meet the more stringent decommissioning funding assurance requirements of 10 CFR 50.75 that are applicable to non-electric utilities.

Although new and unique restructuring proposals will necessarily involve ad hoc reviews by the NRC, the Commission will exercise direct oversight of such reviews to maintain consistent NRC policy toward new entities. The NRC has considered mergers, the formation of holding companies, and the outright sales of facilities, or portions of facilities, to require NRC notification and prior approval in accordance with 10 CFR 50.80 in order to ensure that the transferee is appropriately qualified. For example, the NRC determines whether the surviving organization will remain an ''electric utility'' as defined in 10 CFR 50.2.

In consideration of these concerns, the NRC will be evaluating deregulation and restructuring activities as they evolve. The NRC will take all appropriate actions to carry out its mission to protect the health and safety of the public and, to the extent of its statutory mandate, to ensure consistency with Federal antitrust laws.

The NRC intends to implement policies and take action as described in this policy statement to ensure that its power reactor licensees remain responsible for safe operations and decommissioning. In summary, the NRC will:

(1) Continue to conduct its financial qualifications, decommissioning funding and antitrust reviews as described in the Standard Review Plans being developed in concert with this policy statement;

(2) Identify all owners, indirect as well as direct, of nuclear power plants;

(3) Establish and maintain staff-level working relationships with State and Federal rate regulators;

(4) Evaluate the relative responsibilities of power plant co-owners/co-licensees; and

(5) Reevaluate its regulations for their adequacy to address changes resulting from rate deregulation.

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utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of ''electric utility.'' ''

[2] See Possible Safety Impacts of Economic Performance Incentives: Final Policy Statement, (56 FR 33945; July 24, 1991), for the NRC's concerns relating to State economic performance incentive standards and programs. The NRC understands that States instituted many of these programs as a means of encouraging electric utilities to lower electric rates to consumers. As States deregulate electric utilities under their jurisdictions, these economic performance incentive programs ultimately may be replaced by full market competition.

IV. Issues Related to Restructuring and Economic Deregulation of the Electric Utility Industry

The NRC believes that its regulatory framework is generally sufficient to address many of the restructurings and reorganizations that will likely arise as a result of electric utility deregulation. In many instances, the NRC's review process will follow the current framework, or will otherwise follow policies consistent with the NRC's current regulations. However, the NRC believes that several other policy issues need to be further evaluated and options developed. Therefore, this section addresses NRC policies with respect to electric utility restructuring and economic deregulation both as these policies can be carried out under current regulations and as matters under consideration for further resolution.

A. NRC Responsibilities vis-a-vis State and Federal Economic Regulators

The NRC has recognized the primary role that State and Federal economic regulators serve in setting rates that include appropriate levels of funding for safe operation and decommissioning. For example, the preamble to the 1988 decommissioning rule stated: ''The rule, and the NRC's implementation of it, does not deal with financial ratemaking issues such as rate of fund collection, procedures for fund collection, cost to ratepayers, taxation effects, equitability between early and late ratepayers, accounting procedures, ratepayer versus stockholder considerations, responsiveness to change and other similar concerns* * *. These matters are outside NRC's jurisdiction and are the responsibility of the State PUCs and [the Federal Energy Regulatory Commission] FERC'' (53 FR at 24038; June 27, 1988).

Notwithstanding the primary role of economic regulators in rate matters, the NRC has authority under the Atomic Energy Act of 1954, as amended, (AEA) to take actions that may affect a licensee's financial situation when these actions are warranted to protect public health and safety. To date, the NRC has found no significant instances where State or Federal rate regulation has led to disallowance of funds for safety-related operational and decommissioning expenses. Some rate regulators may have chosen to reduce allowable profit margins through rate disallowances, or licensees have for other reasons encountered financial difficulty.

In order for the NRC to make its safety views known and to encourage rate regulators to continue their practice of allowing adequate expenditures for nuclear plant safety as electric utilities face deregulation, the NRC intends to take a number of actions to increase cooperation with State and Federal rate and financial regulators to promote dialogue and minimize the possibility of rate deregulation or other actions that would have an adverse safety impact. We intend to work and consult with the State PUCs through the National Association of Regulatory Utility Commissioners (NARUC), and with FERC and the Securities and Exchange Commission (SEC) to coordinate activities and exchange information.

B. Co-owner Division of Responsibility

Many of the NRC's power reactor licensees own their plants jointly with other, non-related organizations. Although some co-owners may be only authorized to possess the nuclear facility and its nuclear material, and not to operate it, the NRC views all co-owners as co-licensees who are responsible for complying with the terms of their licenses. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB–459, 7 NRC 179, 200–201 (1978). The NRC is concerned about the effects on the availability of operating and decommissioning funds, and about the division of responsibility for operating and decommissioning funds, when co-owners file for bankruptcy or otherwise encounter financial difficulty.[3] The NRC is evaluating courses of action to ensure that operating and decommissioning costs are paid by owners.

C. Financial Qualifications Reviews

The NRC believes that the existing regulatory framework contained in § 50.33(f) and in the guidance in 10 CFR part 50, appendix C, is generally sufficient at this time to provide reasonable assurance of the financial qualifications of both electric utility and non-electric utility applicants and licensees under the various ownership arrangements of which the staff is currently aware. Licensees that remain ''electric utilities'' will not be subject to NRC financial qualifications review, other than to determine that such licensees, in fact, remain ''electric utilities.'' However, the NRC is evaluating the need to develop additional requirements to ensure against potential dilution of capability for safe operation and decommissioning that could arise from rate deregulation and restructuring.

Section 184 of the Atomic Energy Act and 10 CFR 50.80 provide that no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission consents in writing. The NRC intends to review transfers to determine their potential impact on the licensee's ability both to maintain adequate technical qualifications and organizational control and authority over the facility and to provide adequate funds for safe operation and decommissioning. Such consent is clearly required where a corporate entity seeks to transfer a license it holds to a different corporate entity. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) CLI–92–4, 35 NRC 69 (1992). The NRC staff has advised licensees that agency consent should be sought and obtained under § 50.80 for the formation of a new holding company over an existing licensee. Other types of transactions, including those involving transfers of operating authority or responsibility to non-licensed organizations, have been considered by the staff on a case by case basis to determine whether § 50.80 consent is required. The NRC is evaluating what types of transfers or restructurings should be subject to § 50.80 review. Effective December 28, 1995, all orders approving § 50.80 transfers have been signed by the Director, Office of Nuclear Reactor Regulation. The NRC staff will inform the Commission of unique or unusual licensee restructuring actions.

D. Decommissioning Funding Assurance Compliance Reviews

The NRC believes that the existing decommissioning funding assurance provisions in § 50.75 generally provide an adequate regulatory basis for new licensees to provide reasonable assurance of decommissioning funds. However, to address this and other issues related to decommissioning funding assurance in anticipation of rate deregulation, the NRC published an advance notice of proposed rulemaking (ANPR) (61 FR 15427; April 8, 1996).

E. Antitrust Reviews

The NRC must be able to accurately identify all owners of its licensees to meaningfully assess whether there have been ''significant changes'' since the

[3] The NRC has had experience with 3 licensees who have had much greater than de minimis shares of nuclear power plants and who filed under Chapter 11 of the U.S. Bankruptcy Code: Public Service Company of New Hampshire (PSNH), a co-owner and operator of the Seabrook plant; El Paso Electric Company (EPEC), a co-owner of the Palo Verde plant; and Cajun Electric Power Cooperative (Cajun), a co-owner of the River Bend plant. Both PSNH and EPEC continued their pro rata contributions for the operating and decommissioning expenses for their plants and successfully emerged from bankruptcy. Cajun remains in bankruptcy.

licensing reviews. The NRC anticipates that competitive reviews over the next 5 to 10 years will arise primarily from changes in control of licensed facilities. The regulatory review addressing transfer of control of licenses under 10 CFR 50.80 will be used to determine whether new owners or operators will be subject to an NRC significant change review with respect to antitrust matters.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed by using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the draft policy statement are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC Rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC Rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial telephone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mail.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld can also be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Dated at Rockville, Maryland, this 16th day of September 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–24275 Filed 9–20–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 106 and 107

[Docket No. 95N–0309]

RIN 0910–AA04

Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for the Production of Infant Formula; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 6, 1996, the comment period on the proposed rule that published in the Federal Register of July 9, 1996 (61 FR 36154). The document proposed to revise FDA's infant formula regulations. The agency is taking this action in response to a request for an extension of the comment period. This extension is intended to allow interested persons additional time to submit comments to FDA on the proposed regulations.

DATES: Written comments by December 6, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carolyn W. Miles, Center for Food Safety and Applied Nutrition (HFS–456), 200 C St. SW., Washington, DC 20204, 202–401–9858.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 9, 1996 (61 FR 36154), FDA issued a proposed rule to revise its infant formula regulations to establish requirements for quality factors and current good manufacturing practice (CGMP); to amend its requirements on quality control procedures, notification, and records and reports; to require that infant formulas contain, and be tested for, certain nutrients, be tested for any nutrients added by the manufacturer throughout their shelf life, and be produced under strict microbiological controls; to require that manufacturers implement the CGMP and quality control procedure requirements by establishing a production and in-process control system of their own design; and to implement certain notification requirements in the Federal Food, Drug, and Cosmetic Act. Interested persons were given until October 7, 1996, to comment on the proposed rule.

FDA received a request for an extension of the comment period on its proposed rule to revise its infant formula regulations. After careful consideration, FDA has decided to extend the comment period to December 6, 1996, to allow additional time for the submission of comments on the proposed revisions to its infant formula regulations.

Interested persons may, on or before December 6, 1996, submit to Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–24224 Filed 9–20–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–9–96]

RIN 1545–AU18

Section 1059 Extraordinary Dividends; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of location of public hearing.

SUMMARY: This document changes the location of the public hearing on proposed regulations relating to certain distributions made by corporations to certain corporate shareholders.

DATES: The public hearing is being held on Wednesday, October 2, 1996, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Monday, September 16, 1996.

ADDRESSES: The public hearing originally scheduled in the Commissioner's Conference Room, room 3313, is changed to the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the Federal Register on Tuesday, June 18, 1996 (61 FR 30845), announced that a public hearing relating to proposed regulations under section 1059 of the Internal Revenue Code will be held Wednesday, October 2, 1996, beginning at 10:00 a.m. in room 3313, and that requests to speak and outlines of oral comments should be received by Monday, September 16, 1996.

The location of the public hearing has changed. The hearing is being held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Wednesday October 2, 1996, beginning at 10:00 a.m. The requests to speak and outlines of oral comments should be received by Monday, September 16, 1996. Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

Copies of the agenda are available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–24270 Filed 9–20–96; 8:45 am]

BILLING CODE 4830–01–P

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 840; Ref: Notice No. 826]

RIN 1512–AB46

Labeling of Unaged Grape Brandy (95R–018P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice reopen the comment period for Notice No. 826, a notice of proposed rulemaking, published in the Federal Register on June 13, 1996. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issued raised in the notice.

DATES: Written comments must be received on or before November 11, 1996.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch; Bureau of Alcohol, Tobacco and Firearms: P.O. Box 50221, Washington, DC 20091–0221; *ATTN: Notice No. 826.*

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1996, ATF published a notice of proposed rulemaking (NPRM) in the Federal Register soliciting comments from the public and industry on a proposal to amend the regulations to permit the optional use of the word ''unaged'', instead of ''immature'', to describe grape brandy which has never been stored in oak containers (Notice No. 826; 61 FR 30015).

The comment period for Notice No. 826 was scheduled to close on September 11, 1996. Prior to the close of the comment period ATF receive a request from a national trade association, the American Brandy Association (ABA), to extend the comment period until December 10, 1996. The ABA, representing 90 percent of the producers of American Brandy, stated that it needed additional time to develop data and information related to several issues addressed in the notice.

In consideration of the above, ATF finds that a reopening of the comment period is warranted. However, the comment period is being reopened until November 11, 1996. The Bureau believes that a comment period totaling 150 days is a sufficient amount of time for all interested parties to respond.

Disclosure

Copies of this notice, Notice No. 826, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

Authority and Issuance

This notice is issued under the authority in 26 U.S.C. 5301, 7805, and 27 U.S.C. 205.

Signed: September 16, 1996.

John W. Magaw,

Director.

[FR Doc. 96–24276 Filed 9–20–96; 8:45 am]

BILLING CODE 4810–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5610–5]

Minor Amendments to Inspection/Maintenance Program Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes to change a provision of the federal vehicle inspection and maintenance (I/M) rules relating to motorist compliance enforcement mechanisms for pre-existing

programs. The current rule limits the use of pre-existing enforcement mechanisms to those geographic areas previously subject to the I/M program. This proposed rule change allows states to employ effective pre-existing enforcement mechanisms in any area in the state currently subject to the I/M program. This proposed amendment is consistent with the relevant requirements of the Clean Air Act.

DATES: Written comments on this proposal must be received no later than October 23, 1996.

ADDRESSES: Materials relevant to this rulemaking are contained in the Public Docket No. A–91–75. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. and 5:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material. Electronic copies of the preamble and the regulatory text of this rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS) and the Office of Mobile Sources' World Wide Web cite, hhtp://www.epa.gov/OMSWWW/.

FOR FURTHER INFORMATION CONTACT: Leila Cook, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 741–7820.

SUPPLEMENTARY INFORMATION: Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 et. seq., the U.S. Environmental Protection Agency (EPA) published in the Federal Register on November 5, 1992 (40 CFR part 51, subpart S) rules relating to motor vehicle inspection and maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). EPA here proposes to amend those rules to broaden the geographic area in which pre-existing enforcement mechanisms can be employed.

In the Final Rules section of this Federal Register, EPA has published a direct final rule making these same amendments to Part 51 without prior proposal because EPA views these amendments as noncontroversial and does not expect to receive any adverse comments on this proposal. For a full explanation of the proposed changes and the rationale behind them, readers are referred to that direct final rule. EPA here solicits comments on the proposal. Should anyone submit comments on this proposal, EPA will publish a subsequent document in the Federal Register withdrawing the direct final rule prior to the effective date. EPA will then publish another final rule responding to the comments received and taking final action on this proposal. Anyone wishing to comment on the proposal should do so at this time. If no adverse comments are received the direct final rule will take effect and no further activity is contemplated in relation to this proposed rule.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 10, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–23656 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CO–001–0001b; FRL–5606–5]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Denver Nonattainment Area PM_{10} Contingency Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the state implementation plan (SIP) for the Denver, Colorado PM_{10} (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers) nonattainment area submitted by the State of Colorado on November 17, 1995, to satisfy the Federal Clean Air Act requirement to submit contingency measures for the Denver moderate PM_{10} nonattainment area.

In the Final Rules Section of the Federal Register, EPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. 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.

DATES: Comments on this proposed rule must be received in writing by November 22, 1996.

ADDRESSES: All written comments should be addressed to: Richard R. Long, Director, Air Program, EPA Region VIII, at the address listed below. Information supporting this action can be found at the following location: EPA Region VIII, Air Program 999 18th Street, Denver, Colorado 80202–2466. The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, Air Program EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 312–6434.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final notice which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 27, 1996.

Patricia D. Hull,

Acting Regional Administrator.

[FR Doc. 96–24052 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–58–1–7256b; FRL–5557–9]

State of Texas; Approval of State Implementation Plan (SIP) Addressing the Sulfur Dioxide (SO_2) Emission Limit; Site-Specific Revision to the SIP for the Aluminum Company of America (ALCOA) Facility in Rockdale, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a September 20, 1995, request from the State of Texas for a site-specific revision to the Texas SO_2 SIP. This revision amends the SO_2 emission limitations applicable to the ALCOA facility in Milam County, Texas. In the final rules section of this Federal Register, the EPA

is approving the State's SIP revision as a direct final rule 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 the 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.

DATES: Comments on this proposed rule must be received on or before October 23, 1996.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the above location and at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, P.O. Box 13087, Austin, TX 78711–3087

Anyone wishing to review this petition at the U.S. EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Petra Sanchez, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6686.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Lead, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 9, 1996.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 96–24046 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WA56–7131b; FRL–5603–8]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve in part and take no action in part to the State Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of amending Regulations I and III from a local air agency, the Puget Sound Air Pollution Control Agency. The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this Federal Register, the EPA is approving certain sections and taking no actions on certain sections of the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this 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.

DATES: Comments on this proposed rule must be received in writing by October 23, 1996.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public 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.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

The State of Washington, Department of Ecology, 300 Desmond Drive, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Tamara Langton, Environmental Protection Specialist, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–2709.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: August 19, 1996.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 96–24050 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC54

National Flood Insurance Program; Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations to add coverage under the Standard Flood Insurance Policy to pay for the increased cost to rebuild or otherwise alter flood-damaged structures to conform with State or local floodplain management ordinances or laws consistent with the requirements and guidance of the NFIP.

DATES: Comments are requested and must be received by November 7, 1996.

ADDRESSES: Comments should be sent to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) was authorized by Congress (42 U.S.C. 4001 *et seq.*) to reduce the mounting losses of life and property from floods through sound land use and control practices in the Nation's floodplains and through the availability of flood insurance. As a condition for the availability of flood insurance,

States and local communities must adopt and enforce laws and ordinances that meet or exceed the minimum requirements of the NFIP's floodplain management regulations at 44 CFR 60.3. In fulfilling the statutory requirements to identify the Nation's floodprone areas and establish flood risk zones, the Federal Emergency Management Agency (FEMA) has produced various forms of flood risk maps and data for each of the Nation's floodprone communities. The NFIP's floodplain management regulations for buildings and development in special flood hazard areas require that new or substantially improved residential buildings be elevated so that the lowest floor is at or above the Base Flood Elevation (BFE). A substantial improvement is an improvement to a building, such as an addition or rehabilitation, the cost of which equals or exceeds 50 percent of market value. Owners of new or substantially improved buildings have the option of elevating the lowest floor to or above the BFE or dry floodproofing—non-residential structures only have this option—to the base flood level. The base flood or 100-year flood is a flood having a one percent chance of being equaled or exceeded in any given year.

Most floodprone buildings that predate the existence of the NFIP were built in the floodplains by individuals who did not have sufficient knowledge of the hazard to make informed decisions. Because of their exposure to and risk of flooding, many of these existing buildings will likely be repetitively or substantially damaged during their lifetime. Claims paid for buildings that are repetitively or substantially damaged account for a significant portion of the NFIP's claim payments. Mitigation actions taken to protect these buildings can significantly reduce future claim payments and strengthen the financial condition of the National Flood Insurance Fund. The NFIP's minimum floodplain management regulations require that a repaired or rebuilt substantially damaged building located in a special flood hazard area be treated as a substantial improvement. This means that if a building is determined to be substantially damaged, the lowest floor, including basement, must be elevated or dry floodproofed—non-residential structures only have this option—to the BFE prior to occupancy of the structure. ''Substantial damage'' means damage sustained by a structure ''whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred'' (44 CFR 59.1).

Under the terms and conditions of the Standard Flood Insurance Policy (SFIP), property owners are reimbursed for the costs to repair actual physical damages from flood, but not for additional ''consequential'' costs to comply with a State or local floodplain management ordinance or law requiring that the damaged structure be elevated or floodproofed to the BFE. These requirements during reconstruction to mitigate flood hazards have often created financial hardships for property owners. This prompted Congress to authorize a new benefit under the SFIP to provide assistance to such property owners.

Specifically, section 555 of the National Flood Insurance Reform Act of 1994, Title V of the Riegle Community Development and Investment Act of 1994 (Public Law 103–325), requires the NFIP to provide coverage under the SFIP for the increased costs of complying with the land use and control measures established under section 1361 of the National Flood Insurance Act of 1968, as amended. (Hereinafter this mandated coverage will be referred to as ''increased cost of construction'' (ICC) coverage.)

To implement the mandated change in flood insurance coverage, FEMA formed a task force in 1995 consisting of the agency's insurance and mitigation experts to determine the appropriate terms and conditions of ICC coverage, the limits of its liability, and the amount of the premium surcharges for the coverage consistent with statutory intent and limitations. The FEMA task force also solicited comments from two of the NFIP's major constituent organizations—the Association of State Flood Plain Managers and the Insurance Institute for Property Loss Reduction. FEMA convened a meeting with representatives of these two organizations on January 17, 1996, and the contributions from that meeting helped shape the conceptual and technical framework for this proposed rule.

In proposing this rule for ICC coverage under the SFIP, FEMA had to consider: (1) How the implementation of ICC coverage would conform with the floodplain management laws and ordinances administered by States and local communities participating in the NFIP; (2) how repetitive losses, which are not specifically included in the NFIP's land use and control measures, would be addressed; (3) what features of the insurance industry's building law and ordinance coverage under conventional property insurance contracts should be included under ICC coverage; (4) what the appropriate limits for ICC coverage would be in the light of the current status of the National Flood Insurance Fund and the $75 limit placed by Congress on the premium surcharge that the NFIP may add to flood insurance policies for ICC coverage (42 U.S.C. 4011 (b)); (5) how ICC coverage would be applied to condominiums; and (6) how ICC coverage should be incorporated into the SFIP and the operations of the NFIP.

FEMA considered how the three categories of structures eligible for ICC coverage should be treated in light of the NFIP's current land use and control standards which more than 18,450 local governments have adopted and are enforcing as a condition for participation in the program. The statute authorizes ICC coverage for three categories of structures: (1) Structures that have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the of the structure at the time of the flood event; (2) repetitive loss structures (as defined by the statute); and (3) other structures damaged by flood on multiple occasions where the FEMA Director has determined it is in the best interests of the National Flood Insurance Fund to require compliance with land use and control measures (42 U.S.C. 4011(b)(1),(2), and (3)).

The NFIP defines ''substantial damage,'' which applies to the first category of structures eligible by statute for ICC coverage, as ''damage from any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred'' (44 CFR 59.1). The proposed rule is consistent with the existing NFIP floodplain management requirements that States and localities use ''market value'' as the basis for determining whether a structure has been substantially damaged. (Non-residential structures have the option of being elevated or floodproofed in order to meet the NFIP's requirements. Residential structures however may only be elevated to meet the requirement.)

The proposed rule would limit ICC coverage to situations where the structure has been damaged by ''flood'' as defined in the SFIP. The proposed ICC coverage would not pay for the increased cost of repairing or altering structures substantially damaged by wind, fire, or other perils. This, however, is required by the statute which restricts ICC coverage to flood-damaged structures.

The second category of structures eligible for ICC coverage is repetitive loss structures. In considering how the NFIP would treat ICC coverage for repetitive loss structures within the context of the program's authorities, FEMA concluded that: (1) ICC coverage is intended to respond to State or local ordinances or laws requiring damaged buildings to be rebuilt to more stringent flood protection measures, (2) State or local ordinances or laws must be applied consistently and cannot be applied selectively, i.e., independently of whether or not a property owner is to receive insurance payments, and (3) land use and building requirements are to be implemented at the State or local level.

FEMA therefore proposes to implement the repetitive loss aspect of ICC by having the coverage respond to a State or local ordinance or law requiring actions based on cumulative substantial damage (i.e., two losses within a 10-year period causing cumulative damage totaling 50% or more of the building's value) in combination with the NFIP's having a history of paying repetitive insurance claims on the property. FEMA believes that this approach meets the intent of the legislation in a manner that preserves State or local control over building practices, provides ICC coverage in response to a State or local ordinance or law requiring property owner action, and meets the statutory definition of repetitive loss structure. In that connection, the proposed rule uses the statutory definition for repetitive losses, i.e., a structure ''covered by a contract for flood insurance under this title that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event'' (42 U.S.C. 4121(a)(7)).

The benefit of ICC under the SFIP for repetitive loss structures requires that two conditions be met. First the community has to have in place a cumulative flood damage ordinance consistent with the statutory definition of repetitive loss structure, i.e., involving 2 flood losses within a 10-year period. Secondly, the NFIP must have a history of claims payments for a property that match the flood losses used by the community in enforcing this ordinance for the structure and that satisfy the statutory definition of repetitive loss structure. FEMA has structured the proposed addition to the SFIP to incorporate both those criteria. While States and communities participating in the NFIP are not required to adopt a floodplain management ordinance or law for repetitive loss structures, FEMA recognizes that many NFIP communities may already have an existing provision in their floodplain management law or ordinance which addresses repetitive loss structures. States or communities with a repetitive or cumulative substantial damage/improvement provision in current floodplain management laws or ordinances that are similar or more restrictive than the definition for ''repetitive loss structure'' in the Act (42 U.S.C. 4121(a)(7)) are acceptable as long as the provision is applied consistently to all structure in special flood hazard areas regardless of whether or not the structure is covered by a contract of flood insurance. Also, for a State or local repetitive loss provision to be acceptable, the two losses, when combined, must equal or exceed 50 percent of the value of the structure within a 10-year period ending on the date of the event for which the second claim is made. Since ''repetitive loss structures'' are not addressed in the NFIP's minimum floodplain management requirements, FEMA will provide model repetitive loss law or ordinance language and other guidance to States and communities so that they may adopt such measures prior to the effective date of the final rule providing ICC coverage under the SFIP. FEMA expects that States and communities will require the first of the 2 losses meeting the statutory definition of ''repetitive loss structure'' to occur after the State or community's repetitive loss ordinance or law is in effect.

Also, a State or community official must determine that a structure is substantially or repetitively damaged in accordance with the adopted floodplain management law or ordinance. However, the proposed ICC coverage does not pay for the increased cost of construction to meet State or community floodplain management laws or ordinances which exceed the minimum floodplain management criteria at 44 CFR 60.3, except as provided for properties that are repetitive loss structures in special flood hazard areas as defined in the Act (42 U.S.C. 4121(a)(7)). For example, ICC coverage will not pay for the increased cost of construction to meet substantial damage thresholds which are less than 50 percent of the market value of the structure. Buildings in these communities must be damaged to 50 percent or more of their market value to be eligible for the ICC benefit. ICC coverage will pay for the elevation or floodproofing of structures up to the base flood level but not for elevation or floodproofing above the base flood level. For example, where States or local communities require 1 or 2 feet of freeboard above the BFE, ICC coverage will pay for costs to elevate only to the BFE. Also, ICC coverage will not pay for the cost to elevate or otherwise alter flood-damaged structures located outside of special flood hazard areas. The surcharge limit of $75 per policy for ICC coverage set by Congress prevents extending ICC benefits to damaged structures that must meet State or community laws or ordinances that are more restrictive than the minimum criteria of the NFIP. On the other hand, ICC coverage will not pay for rebuilding to standards that do not meet the NFIP's minimum requirements, i.e., when the property owner has received a variance from the community to rebuild the property to an elevation below the BFE.

While the proposed rule responds to the first two categories of properties, it would not however attempt to address the third category of losses—''multiple losses''—which are not quantified in the statute. The third situation, which is discretionary, may be added to future proposed changes to the SFIP based on greater loss experience and the status of the National Flood Insurance Fund at that time.

FEMA also considered the generic building law and ordinance coverage offered by the insurance industry in homeowners and other property insurance contracts to cover the costs to rebuild, in compliance with State or local ordinances or laws, a structure damaged by a number of covered perils. The sole ''triggering loss event'' however for ICC coverage proposed in this rule is a loss from ''flood'' (including covered flood-related erosion) as defined in the SFIP. This is required by the statute which restricts ICC coverage to pay for the increased cost of construction to comply with a State or local floodplain management ordinance or law requiring elevation of the structure to the BFE or other appropriate mitigation measure after a flood loss.

The proposed rule would establish a limit of $15,000 for ICC coverage. The $15,000 limit considers the average range of actual costs to elevate, relocate, or floodproof various types of construction during reconstruction after a flood, e.g., from slab-on-grade foundations to structures already elevated but below base flood elevation.

In many cases, the maximum limit of $15,000 will enable the insured to pay for most of the costs to elevate or floodproof an existing structure

following a flood loss. Insureds will still have to bear a portion of the costs to improve the structure so that it meets current State or local floodplain management ordinances or laws. In practically all cases, however, the limit of ICC coverage will make a significant contribution toward rebuilding flood-damaged structures in conformity with the NFIP's elevation and floodproofing standards.

In arriving at a limit for ICC coverage, FEMA wanted to establish the highest amount possible for insureds. In light of the maximum surcharge for ICC coverage allowed under law ($75) and the Congressional intent that the program be actuarially sound, however, FEMA has determined that $15,000 is the maximum benefit that could be currently justified under the SFIP.

Additionally, the ICC benefit would be added to the payment for direct loss from flood but the total reimbursement for ICC coverage and direct loss from flood would not be greater than the maximum limits of coverage for that class of structure established under the National Flood Insurance Act of 1968, as amended.

FEMA also considered the appropriate scope and limits of ICC coverage for condominiums. Under the Dwelling Form of the SFIP, individual condominium unit owners may, in addition to the coverage purchased by the condominium association for the commonly owned portions of the complex, receive coverage for the portions of their unit not covered by the association policy and also for assessments placed by the association on the unit owner to pay a prorated portion of the physical damage from flood exceeding the association's policy limits. FEMA considered whether ICC coverage should be provided to individual unit owners in a condominium for the increased costs to ensure that elevation or other alterations of commonly owned portions of the condominium complex substantially or repetitively damaged by flood would comply with State or local floodplain management laws or ordinances. The surcharge limit of $75 per policy for ICC coverage set by Congress prevents extending ICC benefits to individual condominium unit owners for assessments.

FEMA also considered the appropriate approach for providing ICC payments. On the one hand, delaying payment of the ICC benefit until after the flood-damaged structure had been rebuilt or otherwise altered to comply with State or local ordinances or laws would make it impossible for many insureds to initiate the extensive mitigation effort necessary to bring the structure into compliance with floodplain management ordinances or laws. On the other hand, a full payment of the ICC benefit before the necessary mitigation effort is undertaken creates the potential to abandon the structure. Given the financial hardships of many flood victims and the inability to pay out-of-pocket the costs to elevate or floodproof a building before a claim is adjusted, FEMA plans to provide partial payments for ICC claims. Making partial payments is an accepted practice under the NFIP's adjustment process for flood loss. This practice will enable the insured to initiate the mitigation activity required by the State or local ordinance or law. FEMA also plans holdbacks of final payments until the community ensures that the mitigation activity is satisfactorily completed.

In that connection, FEMA believes that the property owner should accomplish required repairs within a reasonable period of time, i.e., within 2 years from the date of loss which time frame is consistent with insurance industry practices. Also, the property owner may decide which mitigation measure will be taken to accomplish the repair or reconstruction of the structure under ICC coverage, (i.e., elevation, retrofitting, floodproofing, relocation, demolition, or any combination thereof). It is expected however that States or communities will work closely with the property owner to discuss alternatives in determining the most technically feasible and cost effective mitigation measure for the damaged structure.

It is also the State or community's responsibility to ensure that all other necessary Federal, State, or local permits have been received pertaining to laws, ordinances, building codes, or other requirements in conjunction with the repair, elevation, floodproofing, retrofitting, relocation, demolition, or other alteration to the building and site on which the property is or is to be located. Additionally, the State or community must ensure that all work is completed in accordance with State or local laws and ordinances prior to issuing an occupancy permit. States or communities must obtain an elevation certificate or floodproofing certificate for structures that are elevated or floodproofed.

The FEMA Regional Offices are available to provide technical assistance to property owners and communities on technically feasible and cost effective mitigation measures that can be applied to the structure and that qualify for the ICC benefit. FEMA also has a number of publications to assist communities, individuals, architects, engineers, builders, and contractors on various mitigation measures and techniques including elevation, floodproofing, retrofitting, and relocation.

Finally, FEMA considered how ICC coverage should be implemented within the context of the insurance operations of the program. Under the proposed rule, ICC coverage would not be subject to the liberalization clause of the SFIP. Rather, since a premium surcharge must be added to pay for the required additional ICC, policyholders would obtain this coverage upon renewal of their policies with effective dates on or after May 1, 1997—the target date for inauguration of this coverage. After the effective date of the final rule, policyholders with three-year policies in force would also have the option of canceling their flood insurance policy on the anniversary date and obtaining the coverage under a rewritten policy. All new flood insurance policies with effective dates on or after May 1, 1997 would include ICC coverage, and policyholders would be charged the premium surcharge appropriate for their flood risk classification.

The proposed rule would add a new section on ICC coverage in the SFIP. In implementing any such changes in coverage, however, insurance companies participating in the Write Your Own program would have the option of printing a new SFIP incorporating the changes in coverage for ICC or attaching an endorsement to the SFIP.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental assessment has been prepared.

Executive Order 12898, Environmental Justice

The socioeconomic conditions to this proposed rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations would result from this proposed rule.

Executive Order 12866, Regulatory Planning and Review

This proposed rule would not be a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this proposed rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, 44 CFR part 61 is proposed to be amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Paragraph A. 6. of Article 3 of Appendix A (1) is proposed to be amended to add the following phrase at the end:

* * * * *

* * * except as provided in Coverage D—Increased Cost of Construction.

* * * * **

3. A new section is proposed to be added to Article 4 of Appendix A (1) to read as follows:

* * * * *

Coverage D—Increased Cost of Construction Coverage (''Building Law and Ordinance Coverage'')

Increased Cost of Construction coverage (Coverage D)is for the consequential loss brought on by a floodplain management ordinance or law affecting repair and reconstruction involving elevation, relocation, retrofitting, or demolition of a structure (or any combination), after a direct loss caused by a ''flood'' as defined by this policy.

The limit of liability under this Coverage D (Increased Cost of Construction) will not exceed $15,000. This coverage is only applicable to policies with building coverage (Coverage A) and is in addition to the Building limit you selected on your application, and appears on the Declaration Page. No separate deductible applies. The maximum amount collectible under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Construction) cannot exceed the maximum permitted under the Act.

Eligibility

A structure covered under Coverage A—Dwelling sustaining a loss caused by a ''flood'' as defined by this policy must:

1. Be a structure that is a repetitive loss structure. A ''repetitive loss structure'' means a structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. The National Flood Insurance Program must have paid the previous qualifying claim, and the State or community must have a cumulative flood damage provision in its flood plain management law or ordinance being enforced against the structure.

Or

2. have had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood event.

This policy will not pay for Increased Cost of Construction to meet State or local floodplain management laws or ordinances which exceed the minimum criteria at 44 CFR 60.3, except as provided in No. 1 above.

Conditions

1. When a structure covered under Coverage A—Dwelling sustains a loss caused by a ''flood'' as defined by this policy, our payment for the loss will be based on:

(a) The increased cost to repair, retrofit, relocate, or otherwise alter the building caused by enforcement of current State or local floodplain management ordinances or laws;

(b) The cost to demolish and clear the site of the building or a portion thereof caused by enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

2. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinance or laws.

3. If this coverage is concurrent with other insurance covering the same loss, this coverage will be prorated with the other insurance. This coverage is primary when the other insurance is expressly excess insurance.

Exclusions

Under this Coverage D (Increased Cost of Construction), we will not pay for:

(1) The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

(2) The loss in value to any covered building or other structure due to the requirements of any ordinance or law;

(3) Any increased cost of construction under this Coverage D:

(a) Until the covered building is actually demolished, repaired, retrofitted, or otherwise altered at the same or another premise; and

(b) Unless the covered building is demolished, repaired, retrofitted, or otherwise altered as soon as reasonably possible after the loss, not to exceed two years.

(4) Loss due to any ordinance or law that you were required to comply with before the current loss.

(5) Increased cost of construction to appurtenant structure(s).

(6) Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

Note: Increased Cost of Construction coverage will not be included in the calculation to determine whether coverage meets the 80% insurance-to-value requirement for replacement cost coverage under Article 8 or for payment under Article 3.B.3 for loss from land subsidence, sewer backup, or seepage of water.

All other conditions and provisions of the policy apply.

* * * * *

4. Paragraph A.6. of Article 3 of Appendix A (2) would be amended to add the following phrase at the end:

* * * * *

* * * except as provided in Coverage D—Increased Cost of Construction.

* * * * *

5. A new section would be added to Article 4 of Appendix A (2), to read as follows:

* * * * *

Coverage D—Increased Cost of Construction Coverage ''Building Law and Ordinance Coverage'')

Increased Cost of Construction coverage (Coverage D) is for the consequential loss brought on by a floodplain management ordinance or law affecting repair and reconstruction involving elevation, relocation, retrofitting, or demolition of a structure (or any combination), after a direct loss caused by a ''flood'' as defined by this policy.

The limit of liability under this Coverage D (Increased Cost of Construction) will not exceed $15,000. This coverage is only applicable to policies with building coverage (Coverage A) and is in addition to the Building limit you selected on your application, and appears on the Declaration Page. No separate deductible applies. The maximum amount collectible under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Construction) cannot exceed the maximum permitted under the Act.

Eligibility

A structure covered under Coverage A—Building sustaining a loss caused by a ''flood'' as defined by this policy must:

1. Be a structure that is a repetitive loss structure. A ''repetitive loss structure'' means a structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. The National Flood Insurance Program must have paid the previous qualifying claim, and the State or community must have a cumulative flood damage provision in its flood plain management law or ordinance being enforced against the structure.

Or

2. Have had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood event.

This policy will not pay for Increased Cost of Construction to meet State or local floodplain management laws or ordinances which exceed the minimum criteria at 44 CFR 60.3, except as provided in No. 1 above.

Conditions

1. When a structure covered under Coverage A—Building sustains a loss caused by a ''flood'' as defined by this policy, our payment for the loss will be based on:

(a) The increased cost to repair, retrofit, relocate, or otherwise alter the building caused by enforcement of current State or local floodplain management ordinances or laws;

(b) The cost to demolish and clear the site of the building or a portion thereof caused by enforcement of current State or local floodplain management ordinance or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

2. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinance or laws.

3. If this coverage is concurrent with other insurance covering the same loss, this coverage will be prorated with the other insurance. This coverage is primary when the other insurance is expressly excess insurance.

Exclusions

Under this Coverage D (Increased Cost of Construction), we will not pay for:

(1) The cost associated with enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

(2) The loss in value to any covered building or other structure due to the requirements of any ordinance or law;

(3) Any increased cost of construction under this Coverage D:

(a) Until the covered building is actually demolished, repaired, retrofitted, or otherwise altered at the same or another premise; and

(b) Unless the covered building is demolished, repaired, retrofitted, or otherwise altered as soon as reasonably possible after the loss, not to exceed two years.

(4) loss due to any ordinance or law that you were required to comply with before the current loss.

Note: Increased Cost of Construction coverage will not be included in the calculation to determine whether coverage meets the 80% insurance-to-value requirement for payment under Article 3. B.3 for loss from land subsidence, sewer backup, or seepage of water.

All other conditions and provisions of the policy apply.

* * * * *

6. Paragraph A.6. of Article 3 of Appendix A (3) would be amended to add to the end the following phrase:

* * * * *

* * * except as provided in Coverage D—Increased Cost of Construction.

* * * * *

7. A new section would be added to Article 4 of Appendix A (3), to read as follows:

* * * * *

Coverage D—Increased Cost of Construction Coverage ''Building Law and Ordinance Coverage'')

Increased Cost of Construction coverage (Coverage D) is for the consequential loss brought on by a floodplain management ordinance or law affecting repair and reconstruction involving elevation, relocation, retrofitting, or demolition of a structure (or any combination), after a direct loss caused by a ''flood'' as defined by this policy.

The limit of liability under this Coverage D (Increased Cost of Construction) will not exceed $15,000. This coverage is only applicable to policies with building coverage (Coverage A) and is in addition to the Building limit you selected on your application, and appears on the Declaration Page. No separate deductible applies. The maximum amount collectible under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Construction) cannot exceed the maximum permitted under the Act.

Eligibility

A structure covered under Coverage A—Building sustaining a loss caused by a ''flood'' as defined by this policy must:

1. Be a structure that is a repetitive loss structure. A ''repetitive loss structure'' means a structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event. The National Flood Insurance Program must have paid the previous qualifying claim, and the State or community must have a cumulative flood damage provision in its flood plain management law or ordinance being enforced against the structure.

Or

2. Have had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood event.

This policy will not pay for Increased Cost of Construction to meet State or local floodplain management laws or ordinances which exceed the minimum criteria at 44 CFR 60.3, except as provided in No. 1 above.

Conditions

1. When a structure covered under Coverage A—Building sustains a loss caused by a ''flood'' as defined by this policy, our payment for the loss will be based on:

(a) The increased cost to repair, retrofit, relocate, or otherwise alter the building caused by enforcement of current State or local floodplain management ordinances or laws;

(b) The cost to demolish and clear the site of the building or a portion thereof caused by enforcement of current State or local floodplain management ordinance or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and to ensure proper abandonment of on-site utilities.

2. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinance or laws.

3. If this coverage is concurrent with other insurance covering the same loss, this coverage will be prorated with the other insurance. This coverage is primary when the other insurance is expressly excess insurance.

Exclusions

Under this Coverage D (Increased Cost of Construction), we will not pay for:

(1) The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants. Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

(2) The loss in value to any covered building or other structure due to the requirements of any ordinance or law;

(3) Any increased cost of construction under this Coverage D:

(a) Until the covered building is actually demolished, repaired, retrofitted, or otherwise altered at the same or another premise; and

(b) Unless the covered building is demolished, repaired, retrofitted, or otherwise altered as soon as reasonably possible after the loss, not to exceed two years.

(4) Loss due to any ordinance or law that you were required to comply with before the current loss.

Note: Increased Cost of Construction coverage will not be included in the calculation to determine whether coverage meets the 80% replacement cost requirement under Article 9 or for payment under Article 3. B.3 for loss from land subsidence, sewer backup, or seepage of water.

All other conditions and provisions of the policy apply.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100,''Flood Insurance'')

Dated: September 12, 1996.

James L. Witt,

Director.

[FR Doc. 96–24319 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180

[Docket HM–223; Notice No. 96–18]

RIN 2137–AC68

Applicability of the Hazardous Materials Regulations to Loading, Unloading and Storage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of meeting; issues to be discussed in Sacramento.

SUMMARY: On July 29, 1996, RSPA published an Advance Notice of Proposed Rulemaking and notice of meeting in the Federal Register. In that document, RSPA announced three public meetings at which it would seek ideas, proposals and recommendations regarding the applicability of the Hazardous Materials Regulations to particular hazardous materials transportation activities. The first of the three public meetings was held in Atlanta, Georgia on September 13, 1996. Based on information gathered at that public meeting and information in the docket, RSPA is announcing the topics to be discussed at the September 25, 1996 meeting in Sacramento, California, by two working groups comprised of interested members of the public. Those two topics are: The unloading of hazardous materials and the storage of hazardous materials. Also, commenters to date have identified several factors which could provide a framework for possible regulation in these areas. These factors are set forth in this notice and will serve as a starting point for discussion for each working group in Sacramento.

DATES:

Meetings

(1) September 25, 1996 from 9:00 a.m. to 4:00 p.m. in Sacramento, California—public working-group session

(2) October 30, 1996 from 9:00 a.m. to 4:00 p.m. in Philadelphia, Pennsylvania—public working-group session.

Written Comments; Public Working-Group Sessions in Sacramento and Philadelphia

Written comments must be received on or before November 30, 1996. Any person wishing to participate in the Sacramento working-group session should notify Nancy E. Machado by telephone, at the number listed below, or in writing, on or before September 23, 1996. Any person wishing to participate in the Philadelphia working-group session should notify Nancy E. Machado by telephone or in writing on or before October 23, 1996. RSPA will attempt to accommodate anyone who indicates, after the deadlines, a desire to participate in either of the two remaining public meetings.

ADDRESSES:

Meetings

(1) California State Department of Social Services Auditorium, 744 P Street, Sacramento, CA 95184.

(2) Penn Tower Hotel, Civic Center Boulevard at 34th St., Philadelphia, PA 19104.

Comments

Address comments to Dockets Unit (DHM–30), Office of Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590–0001. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington D.C. 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

On July 29, 1996, RSPA published an Advance Notice of Proposed Rulemaking (ANPRM) and notice of meeting in the Federal Register (61 FR 39522). In that document, RSPA announced three public meetings at which it would seek ideas, proposals and recommendations regarding the applicability of the Hazardous Materials Regulations (HMR)(49 C.F.R. Parts 171–180) to particular hazardous materials transportation activities. In the ANPRM, RSPA asked that participants in the first meeting, held in Atlanta, Georgia, comment on issues identified and respond to questions raised in the July 29, 1996 ANPRM. RSPA proposed to begin the Sacramento and Philadelphia meetings with an overview of the issues of greatest concern to commenters in Atlanta, and then have participants break out into working groups to discuss those issues and to generate further ideas, proposals and recommendations. At the conclusion of the working-group sessions, RSPA proposed to have each working group present its ideas, proposals and recommendations to all meeting participants for further discussion.

The Atlanta meeting was held on September 13, 1996, and was attended by members of the regulated community, local government interests, and Department of Transportation (DOT), Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) representatives.

After considering the oral statements made by participants in the Atlanta meeting, and information already in the public docket, RSPA announced at the conclusion of the Atlanta meeting that the two topics for working-group discussions in Sacramento would be the unloading of hazardous materials and the storage of hazardous materials. RSPA also noted that, to date, commenters have identified several criteria which might be used to determine the applicability or non-applicability of the HMR. The working-group discussions will focus on those criteria and the advantages and disadvantages of each. The criteria are:

(1) The nature of the activity;

(2) The intent of the activity;

(3) The time-frame involved in the activity;

(4) The physical location where the activity takes place;

(5) The priority of interests of each Federal agency in regulating the activity;

(6) The nature of the shipping papers (*e.g.*, ''active'') at the time the activity is taking place; and

(7) The type of packaging involved in each activity.

RSPA is publishing this information in the Federal Register to allow participants in the Sacramento meeting to prepare in advance for the working-group discussions. RSPA will publish a similar notice in the Federal Register prior to the Philadelphia meeting. The issues to be discussed in Philadelphia may differ from the issues discussed in Sacramento, based on information, ideas, proposals and recommendations gathered by the agency in Sacramento and through comments in the docket.

Issued in Washington, DC on September 16, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–24267 Filed 9–20–96; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 61, No. 185
Monday, September 23, 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. STD–96–005]

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 1955 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the Reporting and Record Keeping Requirements Under Regulations Governing the Plant Variety Protection Act, 1970 (PVPA) (7 CFR Part 97).

DATES: Comments on this notice must be received by November 22, 1996.

ADDITIONAL INFORMATION OR COMMENTS: Contact Marsha A. Stanton, Commissioner, Plant Variety Protection Office, Science & Technology Division, AMS, USDA, NAL Building, Room 500, 10301 Baltimore Boulevard, Beltsville, MD 20705–2351, (301) 504–5518, or Fax: (301) 504–5291.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Application for Plant Variety Protection Certificate and Reporting Requirements under the Plant Variety Protection Act, 1970.

OMB Number: 0581–0055.

Expiration Date of Approval: December 31, 1996.

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

Abstract: The Plant Variety Protection Act (PVPA, approved December 24, 1970; 84 Stat. 1542, 7 U.S.C. 2321 et seq.) was established ''To encourage the development of novel varieties of sexually reproduced plants and make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promote progress in agriculture in the public interest.''

The PVPA is a voluntary user funded program which grants ''patent-like'' ownership rights to breeders of new, distinct, uniform, and stable seed reproduced and tuber propagated plant varieties. To obtain these rights the applicant must provide information which shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires. Application forms, descriptive forms, and ownership forms are furnished to applicants to identify the information which is required to be furnished by the applicant in order to legally issue a certificate of protection (ownership). The certificate is based on claims of the breeder and cannot be issued on the basis of reports in publications not submitted by the applicant.

Form STD–470, Application for Plant Variety Protection Certificate, Form STD–470 series, Objective Description of Variety (Exhibit C to Form STD–470P), and Form STD–470–E, Statement of the Basis of Applicant's Ownership, are the basis by which the determination, by experts in the Plant Variety Protection Office (PVPO), is made as to whether a new, distinct, uniform, and stable seed reproduced or tuber propagated variety in fact exists and is entitled to protection.

The information received on applications, with limited exceptions, is required by law to remain confidential until the certificate is issued (Section 56 of the Plant Variety Protection Act).

The information collection requirements in this request are essential to carry out the intent of the PVPA, to provide applicants with certificates of protection, to provide the respondents the type of service they request, and to administer the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Businesses or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 118.

Estimated Number of Responses per Respondent: 3.05.

Estimated Total Annual Burden on Respondents: 1509 hours.

Copies of this information collection can be obtained from Marian Minnifield, Plant Variety Protection Office, at (301) 504–5518.

Comments are invited on: (a) whether the proposed collection of the 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 should reference OMB No. 0581–0055 and be sent to: Marsha A. Stanton, Commissioner, Plant Variety Protection Office, Science & Technology Division, AMS, USDA, NAL Building, Room 500, 10301 Baltimore Boulevard, Beltsville, MD 20705–2351. All comments received will be available for public inspection during regular business hours at the same address.

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

Dated: September 17, 1996

William J. Franks, Jr.,

Director, Science and Technology Division.

[FR Doc. 96–24242 Filed 9–20–96; 8:45 am]

BILLING CODE 3410–02–P

[TM–96–00–3]

Extension of Time for Submitting Nominations for Members of the National Organic Standards Board (NOSB)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice—Extension of time for filing nominations for membership on the NOSB.

SUMMARY: This notice extends the time for submission of nominations to fill positions on the NOSB. The time has been extended to October 15, 1996. The terms of five members will expire in January 1997. The Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, now must be postmarked on or before October 15, 1996.

ADDRESSES: Nominations should be sent to Dr. Harold S. Ricker, Program Manager, National Organic Program, Transportation and Marketing Division, Room 2945 South Building, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), P. O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720–3252.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the time for making nominations for NOSB membership is extended from August 31, 1996, as stated in the notice published at 61 FR 33897, to October 15, 1996. This will allow additional time for submission of nominations.

Nominations are sought for the positions of farmer/grower (1), handler/processor (1), consumer/public interest (1), environmentalist (1), and scientist (1). Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic farming operation, an owner or operator of an organic handling operation, an individual who represents public interest or consumer interest groups, an expert in the area of environmental or resource conservation, or an individual with expertise in the fields of toxicology, ecology, or biochemistry.

Selection criteria will include such factors as: demonstrated experience and interest in organics; commodity and geographic representation; endorsed support of consumer and public interest organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to USDA within 10 working days of its receipt, to expedite the security clearance process that is required by the Secretary.

Authority: 7 U.S.C. 6501–6522.

Dated: September 16, 1996.

Eileen S. Stommes,

Director, Transportation and Marketing Division.

[FR Doc. 96–24243 Filed 9–20–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Oil and Gas Leasing Analysis; Helena & Deerlodge National Forest, in Lewis and Clark, Powell, Jefferson, Broadwater, and Meagher Counties, MT

AGENCIES: Forest Service, USDA & Bureau of Land Management, USDI.

ACTION: Intent to prepare a supplement to the Final Environmental Impact Statement (FEIS) for the Helena National Forest and Elkhorn Portion of the Deerlodge National Forest Oil and Gas Leasing Analysis.

SUMMARY: USDA Forest Service and USDI Bureau of Land Management will prepare a supplement to the FEIS to disclose the potential cumulative impacts of oil and gas leasing and other reasonably foreseeable projects that have arisen since the FEIS was completed in April, 1995. A year elapsed between completion of the FEIS and publication of the Record of Decision (ROD), and new project proposals had arisen in the interim. The cumulative effects of these reasonably foreseeable projects have not been fully disclosed. This information will be added to previous information for the decision makers as they reconsider their decisions. The area covered by this supplement includes National Forest and split estate lands with Federal mineral ownership within the Helena National Forest and the Elkhorn Mountains portion of the Deerlodge National Forest.

The original Notice of Intent to prepare an Environmental Statement was published in the Federal Register, December 1, 1992, Volume 57, No. 231 page 55900. An amendment to this Notice of Intent was published in the Federal Register, August 19, 1993, volume 58, No. 159 page 44159. The Record of Decision was signed on February 12, 1996 by Forest Supervisor Thomas J. Clifford; and February 14, 1996 by BLM State Director Larry E. Hamilton. The Notice of availability of the Oil & Gas leasing decisions for the Helena Forest and Elkhorn Mountain portions of the Deerlodge National Forest was filed March 5, 1996. This decisions was appealed through both the Forest Service and Bureau of Land Management administrative appeals processes. The BLM filed a motion for remand on June 27, 1996 and the BLM decisions were set aside by Administrative Judge John H. Kelly on July 9, 1996. Acting Helena Forest Supervisor Jim Guest withdrew the Forest Service decisions on July 30, 1996. This will allow the potential cumulative impacts of oil and gas leasing and other reasonably foreseeable projects that have arisen since the EIS was published to be analyzed and considered

The purpose of the project remains the same as stated in the 1995 FEIS. The Forest Service will decide which lands are available for lease and what mitigating stipulations apply for oil and gas exploration and development. The Forest Service proposes to make minor modifications from the preferred alternative displayed in the February 14, 1996 decision. The modifications include increasing the administratively unavailable acres in the Tenmile area (Helena municipal water supply) and increasing the No. Surface Occupancy acres within the Black Mountain area. These changes are proposed following discussions with appellants as part of the administrative appeals process. Other than the above, issues and alternatives remain the same as disclosed in the 1995 FEIS.

No additional scoping to identify issues and concerns is planned prior to the release of the supplement to the Environmental Impact Statement. However, the Forest Service and Bureau of Land Management would like to receive information relating to possible changed conditions that may affect leasing decisions and were not considered during the analysis disclosed in the original document.

The agencies are aware of the following reasonably foreseeable proposals and projects which may affect the area under consideration for leasing.

Mining/mine Reclamation

—Diamond Hill T7N, R1W
—Santa Fe Gold T6N, R2–3N
—Charter Oak Rehabilitation, T9N, R7W
—Vosberg Reclamation T7N, R1W

Vegetation Manipulation

—Poorman T13N, R7–8N
—North Elkhorns T8–9N, R2W
—Bull Sweats T11–12N, R1–2W
—Jericho Salvage T8N, R6W
Elkhorn Travel Plan T6–9N, R1E, R1–3W
Tizer/Park Lake Exchange T8N, R5W; T7N, R2W

DATES: Written comments and suggestions on new circumstances, or new information relevant to environmental concerns with a bearing

on this proposed project, or its impacts, should be received by no later than October 23, 1996. A Draft Supplement is scheduled for release in November, 1996. A Final Supplement to the EIS is scheduled for release in February, 1997.

ADDRESSES: Submit written comments and suggestions to Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601.

FOR FURTHER INFORMATION CONTACT: Tom Andersen, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601; phone (406) 449–5201 ext 277.

The Forest Supervisor for the Helena National Forest has been assigned the task of completing the Supplement. The responsible officials who will make the leasing decisions are: Thomas J. Clifford, Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, Mt 59601; and Larry E. Hamilton, State Director, USDI-Bureau of Land Management, Montana State Office, 222 North 32nd Street, PO Box 36800, Billings, MT 59107–6800.

They will decide on this proposal after considering comments, responses, and environmental consequences discussed in the FEIS (released March 4, 1996), information contained in this Supplement, (scheduled for release January, 1997) and applicable laws, regulations, and policies. The decision, rationale for the decision, and responses to comments received, will be documented in the FEIS supplement, and in a Record of Decision (ROD).

The comment period on the draft supplement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service and Bureau of Land Management believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplements must structure their participation on the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft supplement stage but that are not raised until after completion of the final supplement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wilson Heritages, Inc.* v. *Harris,* 490, F. Suppl 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement.

To assist the Forest Service and Bureau of Land Management in identifying and considering concerns on the proposed action, comments on the draft supplement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Comments may also address the adequacy of the draft supplement. Reviewers may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 21, 1996.

James E. Guest,

Acting Forest Supervisor, Helena National Forest.

[FR Doc. 96–24263 Filed 9–20–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyard

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AL–190—Natural Bridge Stockyard, Natural Bridge, Alabama
AZ-115—Tucson Livestock Auction, Inc., Marana, Arizona
GA–217—Rocking Horse Ranch Livestock Auction, Poulan, Georgia
GA–218—R & R Goat and Livestock Auction, Swainsboro, Georgia
MN–191—Iron Range Livestock Exchange, Inc., Aitkin, Minnesota
MS–169—McDermott Sale Company, Byhalia, Mississippi
WI–145—Richland Cattle Center L.L.C., Richland Center, Wisconsin

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408—South Building, U.S. Department of Agriculture, Washington, D.C. 20250 by October 2, 1996. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, D.C. this 17th day of September 1996.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 96–24264 Filed 9–20–96; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part.

SUMMARY: On May 6, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip (BSS) from Germany, and its intent to revoke in part (61 FR 20214). The review covers exports of this merchandise to the United States by one manufacturer/exporter, Wieland-Werke AG (Wieland), during the period March 1, 1994 through February 28, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we adjusted our calculations of Wieland's margin for these final results. The review indicates the existence of no dumping margins for this period. We have also determined not to revoke the antidumping duty order in part.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

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 to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On May 6, 1996, the Department (the Department) published in the Federal Register the preliminary results of its administrative review of the antidumping duty order on BSS from Germany, and its intent to revoke in part (61 FR 20214). The antidumping duty order on BSS from Germany was published March 6, 1987 (52 FR 6997).

Scope of the Review

Imports covered by this review are shipments of BSS, other than leaded and tinned BSS. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.00. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

The period of review (POR) is March 1, 1994 through February 28, 1995. The review involves one manufacturer/exporter, Wieland.

Analysis of Comments Received

We received a case brief from the petitioners, Hussey Copper, Ltd., The Miller Company, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL–CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America. We received a rebuttal brief from Wieland. At the request of the petitioners, we held a hearing on June 19, 1996.

Comment 1: The petitioners argue that ''the Department must require Wieland to submit complete home market sales data and other relevant information in order to be able to conduct a thorough level of trade analysis''. Citing 19 U.S.C. § 1677b(a)(1)(B)(i), and the Department's October 23, 1995, supplemental questionnaire in *Certain Pasta from Italy and Turkey*, petitioners claim that ''the Department now affirmatively collects narrative information and sales data from a respondent, then analyzes the information to establish whether different levels of trade do or do not exist.'' The petitioners argue further that ''a respondent is responsible for reporting complete sales that include *all* of its sales of subject merchandise in both the home market and the comparison market during the period of review,'' adding that our questionnaire required just such information (emphasis in the original).

The petitioners claim that by excluding sales by two affiliates, Wieland unilaterally decided not to report all of its home market sales of the subject merchandise in both its original and supplemental questionnaire responses. The petitioners characterize Wieland's election not to report complete home market sales data as a refusal to comply with the Department's questionnaires.

The petitioners take issue also with the Department's actions at verification; in particular, our review of sales by Wieland's affiliates Roessler GmbH (Roessler) and Schwarzwalder Metallhandel GmbH (SMH). The petitioners claim that the Department undertook this verification step as an alternative to requiring Wieland to report complete home market sales data. The petitioners assert that in examining these affiliate sales at verification, the Department was improperly gathering new information, rather than merely verifying the accuracy of questionnaire responses already submitted. The petitioners argue that such a procedure is contrary to statutory intent and bars other parties from participating meaningfully in the administrative process.

Wieland argues that the information on the record establishes that the Department made the appropriate comparisons at the correct level of trade (LOT), and that no further sales information is necessary. Wieland points out that it reported home market sales of the most similar merchandise at the same LOT, and that no sales by SMH and Roessler are of merchandise as physically similar to the U.S. merchandise as those which it reported.

Wieland further argues that, in the absence of a challenge to the Department's model-matching methodology, the petitioners'' LOT argument is moot, and states that there is no valid reason to collect additional sales data from SMH and Roessler because none of their sales would be used in a fair value comparison. The respondent also points to record evidence from the verification confirming that sales by SMH and Roessler were sold at a different LOT from Wieland's U.S. sales.

Department's Position: We disagree with the petitioners. From the record evidence we were able to determine that the sales in question were of physically less similar merchandise than the reported home market sales. As a result, we determined that the information which the petitioners would have us collect was not needed for our analysis. We further determined that to require a full reporting of these data would have occasioned an unwarranted delay in the conduct of the review.

Furthermore, sheet sales by SMH and Roessler were downstream sales which did not represent a significant portion of home market sales. Accordingly, we determined that the respondent need not report these home market downstream sales. *See Certain Corrosion Resistant Carbon Steel Flat Products from Korea*, (60 FR 44008, 44009, August 24, 1995, and 61 FR 18547, April 26, 1996), and *Certain Cold-Rolled Carbon Steel Flat Products from Korea* (60 FR 65284, 65286, December 19, 1995).

We note that contrary to the petitioners' assertion, Wieland did not unilaterally limit its response; in its February 14, 1996, letter Wieland requested that it be allowed to exclude sales by SMH and Roessler, explaining, among other points, that these sales were of merchandise less physically similar to the U.S. merchandise than the sales which Wieland reported, and that in volume they represented an insignificant portion of home market sales.

We included in our verification outline specific instructions to make available the data on sales of subject merchandise by SMH and Roessler. We verified that all such sales were of merchandise which was physically less similar to the U.S. merchandise than the reported sales, and that their combined volume was a very small percentage (less than one percent) of home market sales of sheet. We further verified that the home market sales by Roessler and SMH were at a different LOT. We did not gather new information, as the petitioners allege, or conduct any form of analysis, but conducted a standard verification of the response in accordance with law.

Because we determined that the merchandise sold by SMH and Roessler was physically less similar to the U.S. merchandise than the reported home market sales, we determined that we would not use this information for comparison purposes and that it was not necessary to require Wieland to report it.

We note that our decision to allow the exclusion of sales information for SMH and Roessler was not predicated on the reasons cited, for example, in Wieland's June 12, 1996, rebuttal brief and in its February 5, 1996 letter responding to the petitioners' February 2, 1996 deficiency comments. We do not agree with Wieland's assertion that language in 19 U.S.C. § 1677(16) (A) and (B) and in the glossary of the Department's questionnaire authorized Wieland to selectively report only identical or most similar merchandise. Respondents must report all sales of identical and similar merchandise, and it is the Department's, not the respondent's, responsibility to determine whether certain sales need to be reported or not.

Comment 2: Concerning revocation, 19 CFR § 353.25(a)(2) states that the Secretary may revoke an order in part if the Secretary concludes that

(i) One or more producers or resellers covered by the order have sold the merchandise at not less then foreign market value for a period of at least three consecutive years;

(ii) It is not likely that those persons will in the future sell the merchandise at less than foreign market value; and

(iii) For producers or resellers that the Secretary previously has determined to have sold the merchandise at less than foreign market value, the producers or resellers agree in writing to their immediate reinstatement in the order, if the Secretary concludes under § 353.22(f) that the producer or reseller, subsequent to the revocation, sold the merchandise at less than foreign market value.

The petitioners challenged Wieland's claim to have met the first criteria, three years of shipments with no margins, arguing that the low volume of Wieland's shipments in the eighth POR ''is tantamount to no volume at all,'' and thus does not fulfill the requirement for shipments with no dumping margin. The petitioners also note that the Department's discussion of revocation criteria in the proposed regulations (61 FR 7308, February 27, 1996) contains references to ''commercially significant quantities.'' The petitioners caution that reliance upon small volumes can enable a respondent to ''control a handful of transactions in its home market and the United States so as to convey the misleading impression of no dumping.'' The petitioners urge a comparison of the eighth review volume with the volume in prior years.

Wieland maintains that it has satisfied every statutory and regulatory requirement necessary to obtain revocation of the order. Citing *PQ Corp.* v. *United States*, 652 F. Supp. 724 (CIT 1987) (*PQ Corp.*) and *Antifriction Bearings (Other than Tapered Roller Bearings) from Italy*, (60 FR 10959, 10966–67, February 28, 1995) (AFBs/Italy), Wieland argues that even a single sale is sufficient and that no minimum quantity is required.

Wieland argues that the petitioners'' efforts to rely on language in the Department's proposed regulations are premature.

Wieland further argues that its U.S. sales were of quantities consistent with the quantities of Wieland's other sales and were, in fact, greater in quantity than most of its home market sales. Wieland states that nothing in the statute or even the proposed regulations supports the petitioners'' suggestion that the eighth POR sales were not of a commercially significant volume. Wieland argues as well that it would be inappropriate to compare the eighth POR U.S. sales volume to total home market and third country sales in earlier periods.

Department's Position: We agree with Wieland that it made sales in the eighth period and we disagree with the petitioners'' equation of a decreased sales volume with no volume at all. We examined the U.S. and the home market sales and did not find evidence that either were not *bona fide* transactions.

PQ Corp. did not involve revocation and does not limit the Department's discretion in making determinations as to likelihood of resumption of sales at LTFV.

We agree with Wieland that the proposed regulations cited by the petitioners are not applicable because they are not final.

Comment 3: The petitioners argue that administrative and judicial precedents make clear that the burden is on the respondent to demonstrate that there is no likelihood of a resumption of sales at less than fair value (LTFV). The petitioners note that in *Television Receivers from Japan* (55 FR 11420, 11422, March 28, 1990) (*TVs/Japan*) the Department concluded that Toshiba had not presented ''sufficient additional information to support its contention that LTFV sales would not resume if the finding were to be revoked.'' The petitioners further note that in upholding this determination, in *Toshiba Corp.* v. *United States*, 15 CIT 597, 599 (1991) (*Toshiba*), the Court of International Trade (the Court) confirmed that it was for Toshiba, having requested the review, to come forward with ''real evidence'' to persuade Commerce to revoke the finding.

Similarly, the petitioners argue, the Court, in *Sanyo Electric Co., Ltd. et al.* v. *United States*, 15 CIT 597, 603 (1991) (Sanyo), stated that the investigation was conducted at Sanyo's request and it was for Sanyo to come forward with real evidence to persuade Commerce to revoke the finding. The petitioners also cite *Matsushita Electric Industrial Co.* v. *United States*, 750 F.2d 927, 937 (Fed. Cir. 1994) (*Matsushita*), where the appellate court similarly held that it was for respondents to come forward with real evidence justifying revocation of a countervailing duty order.

The petitioners note that in *Toshiba, Sanyo,* and *Frozen Concentrated Orange Juice from Brazil* (56 FR 52511, October 21, 1991) (*FCOJB*), the respondents did offer some evidence that they hoped would persuade the Department that there was no likelihood of a resumption of sales at LTFV and that, by contrast, Wieland has submitted no such evidence, notwithstanding that Wieland itself should be in the best position to identify and provide any such information. Rather, the petitioners note, Wieland has suggested that by making sales for three years with no dumping margins and providing the required certifications, it has satisfied all the requirements for revocation.

The petitioners also argue that the dramatic reduction in volume and the change in the product mix of Wieland's U.S. sales are evidence that Wieland would be likely to resume sales at LTFV if the antidumping duty order were revoked for Wieland. In particular, the petitioners highlight the elimination of Wieland's U.S. sales of strip in the eighth review period and argue that

strip, which Wieland had previously sold in the U.S. market, is typically a more important product in the BSS market (June 19, 1996 hearing transcript at 33–34).

Finally, the petitioners argue that the Department must verify any evidence or proof relied upon to determine whether a resumption of sales at LTFV is likely, and note that this was not done in the Department's verification of Wieland's sales data.

Wieland argues that there is no likelihood of the resumption of dumping and that the petitioners have failed to provide any evidence to the contrary. Wieland notes that the three-year period of the sixth through eighth reviews was marked by changing exchange rates and competitive market conditions, and argues that the absence of dumping margins in this environment proves that Wieland is able to adapt to changing market conditions and economic conditions and to price its sales above foreign market value. Wieland cites the Department's partial revocation in *Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results* (55 FR 47093, 47097, November 9, 1990) (*TVs/Taiwan*) and the upholding of this revocation in *Tatung Company* v. *United States,* 1994 WL 704952, 704956 (CIT) (*Tatung*), where the Court ruled that ''ordinarily past behavior would constitute substantial evidence of expected future behavior.''

Wieland claims that its ''absence of dumping over the last three review periods is in and of itself substantial and dispositive evidence that there is no likelihood of the resumption of dumped sales.''

Wieland notes that the Court in *Tatung* and the Department in *FCOJB* rejected mere speculation by petitioners that dumping could resume. Wieland maintains that in every case of which it is aware under the 1989 and subsequent regulations, the Department rejected speculation about likelihood and relied on the respondent's past pricing behavior. Wieland argues that the final results and related court decisions involving televisions from Japan, which the petitioners cite, are distinguished from the present case by the fact that in those cases the absence of shipments by the respondents deprived the Department of evidence as to likelihood of resumption of sales at LTFV.

Wieland argues that the Department has repeatedly analyzed and relied on past sales behavior as the best evidence of future behavior. Wieland cites *TVs/Taiwan,* where the Department rejected a petitioner's speculation that deteriorating exchange rates alone would make sales at LTFV likely, and chose instead to rely on the respondent's ''proven track record of no dumping during an appreciating Taiwanese dollar.'' Similarly, Wieland argues, in *FCOJB* the petitioners'' arguments concerning market factors, which included fluctuating and falling world prices for orange juice and increases in foreign capacity, failed to persuade the Department of a likelihood of resumption of dumping, in the face of no dumping by the respondent over the three previous years.

Concerning the decrease in its shipments and their changed character, Wieland acknowledges that ''one way of adapting to an order is to move into higher value-added products * * *'' and further explains that ''Wieland has complied with the order by eliminating sales of product which it could not sell at fair value, and pricing all other products above fair value'' (rebuttal brief, pp. 24–25). Wieland also attributes its decrease in U.S. shipments to its approximately 23 percent antidumping cash deposit rate.

Regarding the decrease in shipments of brass sheet and strip from Germany in general, which the petitioners cite as evidence of Wieland's being likely to resume sales at LTFV if the order were revoked, Wieland notes that the category in question encompasses non-subject merchandise, and that, in any case, it is normal for an appreciating home market currency to cause decreases in exports. Wieland further notes that it exported subject merchandise to the United States without dumping, despite the appreciation of its home market currency.

Wieland maintains that the petitioners'' arguments on likelihood are attempts to confuse the issue. Wieland argues that these factors merely prove that in the face of various changes in market and competitive conditions, ''Wieland has maintained the necessary price discipline to eliminate sales at less than fair value.''

Wieland further argues that it has met the final requirement for revocation by agreeing to the immediate reinstatement of the antidumping duty order if the Department subsequently finds that Wieland has resumed dumping.

Department's Position: In addition to the absence of sales at LTFV for three consecutive years, the Department must also be satisfied that there is no likelihood of resumption of dumping of the subject product before revoking an order in whole or in part (19 CFR § 353.25(a)(2)(ii)).

In this case, as discussed below, Wieland has shipped progressively less BSS to the United States since the imposition of the order, until in the most recent period it made but one sale, and that of sheet rather than the lower-cost strip. But Wieland has built a plant in the United States that uses strip as a feed product. We expect that if there were no order in place Wieland would naturally prefer to use its own strip from Germany to supply its U.S. plant, rather than buy from a competitor. In view of this prospect and Wieland's apparent difficulty in selling strip at fair value in the United States, we believe it difficult to hold that Wieland will be able to ship BSS, particularly strip, to the United States at prices at or above fair value. We therefore cannot conclude that there is no likelihood of a resumption of sales at LTFV.

We discuss the reasons mentioned in the above summary, as well as additional considerations and the parties' arguments, in greater detail below.

In prior cases where revocation was under consideration and the likelihood of resumption of dumped sales was at issue, the Department has considered, in addition to the respondent's prices and margins in the preceding periods, such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without LTFV sales. *See, e.g., FCOJB, Titanium Sponge From Japan,* (53 FR 21099, July 1988) (*Titanium*) and *TVs/Japan*. Based on our analysis of such market and industry factors, as well as the facts specific to this case, we cannot conclude that there is no likelihood of a resumption of dumping.

Competitive conditions for copper and brass mill products are characterized by oversupply. According to a trade journal, the market for copper and copper-alloy semi-finished products, a category which includes brass sheet and strip,

> * * * looks to be in decline this year * * * The drop in demand is endemic throughout Europe, with France and Germany looking particularly depressed at the moment, and producers are generally pessimistic about the market in 1996. Increased levels of stocks from the end of 1995 are also aggravating this lower demand.'' (*Metal Bulletin,* N. 8054, February 15, 1996, p. 13).

This decrease in demand in the European market comes only two years after a ''glut in the global marketplace'' resulted in a downward trend in product prices, in the North American market as well as elsewhere (*Purchasing,* March 3, 1994 v. 116, n. 3, p. 69).

At the same time, the U.S. market continues to remain desirable for foreign exporters, and Wieland in particular, as explained below, by virtue of its large size relative to other markets (*Metal Statistics*, Chilton Publications, New York, N.Y., 1996, p. 169). Germany has historically been the largest source of BSS imports into the U.S. market and is the largest producer of semi-finished copper and copper-alloy products, including BSS, in the world (*American Metal Market*, February 16, 1995; also, *Metal Statistics*, pp. 16, 169).

German shipments to the United States of those categories of brass products which include covered merchandise show dramatic, sustained declines following the antidumping duty order. *See IM145 Data Bank U.S. General Imports and Imports for Consumption*, December 1992–1995, Foreign Trade Division of the Bureau of the Census, (IM145 Data); *see* also *1985 U.S. Foreign Trade Highlights*, U.S. Department of Commerce, International Trade Administration, 1986 (*1985 Foreign Trade*).

Wieland's own shipments of covered merchandise have declined even more sharply. (*See* August 29, 1996 *Analysis Memorandum for Final Results* (*Analysis Memorandum*).) In fact, Wieland's shipments during the last three administrative review periods have declined each year, culminating in Wieland's single U.S. shipment in the eighth POR of less than 70,000 pounds of subject merchandise, less than one-thousandth of the volume before the order went into effect (*See Analysis Memorandum*.) Furthermore, Wieland's last shipment was of relatively high-valued sheet, whereas in previous periods Wieland also sold lower-valued strip, which accounts for a much larger share of the market than sheet. The sharp decrease in volume and the change in the makeup of Wieland's U.S. sales both suggest that Wieland has difficulty selling strip covered by the order above fair value.

Wieland is the largest BSS producer in Germany and also maintains substantial commercial and re-rolling operations in the United States. Wieland's U.S. plant, which does not cast brass, is a processor of subject merchandise, including lower-valued strip, which Wieland has sold in the past. Strip is a more important part of the BSS market than sheet (hearing transcript at 34) and, as a lower-valued commodity, is more likely than sheet to be sold at LTFV (rebuttal brief at 24). Wieland recently acknowledged that it faced continuing pressure from imports in the home market as a result of the strength of the Deutsche mark, and expressed scepticism about future capacity utilization, because its level of new orders had been unsatisfactory (*Boerson Zeitung*, March 5, 1996, *Handelsblatt*, March 7, 1996). With capacity utilization in the home market under threat, and a re-rolling facility in the United States which both processes and re-sells subject merchandise, including lower-valued strip, Wieland would have incentives to resume sales in the United States of strip, a product which it was unable to sell at fair value in the most recent period, as shown by the company's recent U.S. shipments data and as confirmed by Wieland's own statements (rebuttal brief, pp. 24–25).

Concerning Wieland's argument that high antidumping duties prevented it from selling strip at fair value, there is no evidence on the record of a significant increase in Wieland's U.S. sales of strip since the 0% antidumping duty cash deposit rate went into effect in July 1995.

In addition to the above considerations, the continued strengthening of the Deutsche mark provides a further impetus for Wieland to resume sales at LTFV in the absence of an order. In previous cases the Department has recognized exchange-rate relationships as significant elements in its determinations about the likelihood of resumption of sales at LTFV. *See Titanium*, *Tatung*, and *TVS/Japan*. In this case we note that the strengthening of the Deutsche mark vis-a-vis the U.S. dollar continues to date; this tends to offset the benefits to Wieland resulting from the removal of the previous cash deposit rate following the seventh review. Wieland acknowledges that the strengthening Deutsche mark did require it to adjust its prices to ensure fair value sales (rebuttal brief, p. 24). Public data on brass shipments from Germany, as well as case-specific facts, such as Wieland's history of declining U.S. imports and the changing composition of its U.S. sales, support the view that continued strengthening of Wieland's home market currency increases the likelihood that its future sales would be made at LTFV, because the strengthening home market currency will tend to make home market prices higher relative to U.S. prices.

Wieland thus has several incentives to resume shipments of covered merchandise, including lower-valued strip, both to supply its U.S. re-rolling facility directly and to maximize capacity utilization at home, and would be doing so against a backdrop of an ever-strengthening home market currency, in a mature industry historically known for its price competitiveness. It is therefore reasonable to expect that Wieland would supply its U.S. plant with its own strip and that this strip would be likely to be sold at LTFV. For these reasons, we cannot conclude that there is no likelihood of sales at LTFV.

We disagree with Wieland that the Department's approaches to the revocation issue in *TVs/Japan* and *FCOJB*, and the court decisions in *Toshiba*, *Matsushita*, and *Sanyo* are irrelevant merely because the criteria for revocation changed subsequently or because the cases involved no shipments. The principle remains unchanged that the Department must be satisfied that there is no likelihood of resumption of dumping, and this determination is still not solely dependent on three years of no margins. If, as Wieland suggests, three years of no margins were sufficient evidence on the likelihood of resumption of dumping, then the second regulatory criterion would be superfluous. We agree with the petitioners that our practice and the court decisions cited above confirm that the second regulatory criterion, that there be no likelihood of resumption of dumped sales, is separate and distinct from the first criterion.

Furthermore, the facts in *TVs/Taiwan*, *FCOJB*, and *AFBs/Italy*, where we did revoke orders in whole or in part, differ in several respects from the facts in this case.

In *TVs/Taiwan* the respondent, unlike Wieland, had never been found to have sold at LTFV either before or since the order was issued (*TVs/Taiwan*, 47097, Comment 16). Also unlike Wieland, which sold a single model in a single transaction in the eighth POR, in *TVs/Taiwan* the respondent had sold a multitude of different models in substantial quantities in the United States (*see Response of Tatung Company to the Antidumping Questionnaire Involving Color Television Receivers from Taiwan*, November 15, 1985, public version, and *Memorandum from Analyst to File, Tatung Preliminary Analysis*, public version, April 7, 1987, p. 1). Finally, *TVs/Taiwan* was different from this case because, other than the petitioner's one argument on currencies, there was no additional evidence indicating the likelihood of a resumption of dumping.

Similarly, there was little evidence bearing on the likelihood issue in *AFBs/Italy*. In that case the petitioners claimed the respondent's U.S. sales were ''minuscule''; they were, in fact, greater than the quantities relied upon in the Department's initial LTFV determination. This fact alone distinguishes *AFBs/Italy* from the

present case, where there is a contrary trend. Finally, unlike this case, where the petitioners have made several arguments concerning the likelihood of resumption of dumping, in *AFBs/Italy* the petitioner's only other argument on likelihood was the fact that SKF-Italy was part of a multinational corporation.

In *FCOJB*, the Department examined the evolution of product prices, current and projected production trends, potential increases in demand by third country markets, and present U.S. market conditions, but determined that each of these factors either represented evidence against the likelihood of a resumption of dumping, or did not correlate with a trend of dumping by Brazilian producers. These facts differentiate *FCOJB* from the present case. As discussed above, market and currency pressures have made it harder, and are continuing to make it harder, for Wieland to sell at or above fair value.

Wieland is correct that it and the respondent in *TVs/Taiwan* sold merchandise in the United States at fair value despite a strengthening home market currency; but, again, other facts in that case, as described above, provided more convincing evidence of no likelihood of resumption of dumping. Wieland does concede that the strengthening of the Deutsche mark, which continues to date, has affected its ability to sell at fair value (rebuttal brief, p. 24).

Thus, the determinations to revoke in *TVs/Taiwan* and *AFBs/Italy* were reached in light of different factors, and there was less evidence of likelihood of resumption of LTFV sales. *TVs/Taiwan*, *Tatung* and *AFBs/Italy* do not stand for a reliance on three years of no dumping as conclusive evidence of no likelihood of a resumption of dumping. Accordingly, we disagree with Wieland's suggestion that these cases show that the Department should rely solely on Wieland's history of three years with no margins as a sufficient indicator of its future behavior.

To recapitulate, the available evidence concerning market and economic factors does not support a conclusion that there is no likelihood of Wieland's resuming sales at LTFV. Indeed, multiple factors argue against such a conclusion: the drop in demand for these products in Europe, especially in Germany, which gives Wieland an incentive to export these products in order to prevent a diminishing capacity utilization rate; Wieland's severe decreases in shipments of BSS to the United States since the imposition of the order, and its recent complete withdrawal from the strip segment of the market; Wieland's ownership in the United States of a re-rolling facility, built since the order, which requires subject merchandise as feedstock, notably for lower-valued strip; and the difficulties of competing for sales of strip in light of a strengthened Deutsche mark, both in the home market and the U.S. market, all argue against a conclusion that there is no likelihood of a resumption of LTFV sales by Wieland.

Having considered the industry conditions and the case facts, the Department is not satisfied that there is no likelihood of a resumption of dumping of covered merchandise by Wieland; therefore, we are not granting revocation in part.

Comment 4: The petitioners argue that the Department failed to take into account the revisions made by Wieland with respect to its home market packing expenses in its January 11, 1996, submission. The respondent did not contest this point.

Department's Position: We agree with the petitioners and have amended our analysis to reflect the revised expense amount for these final results.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margin exists for Wieland:

Manufacturer/exporter	Period	Percent margin
Wieland-Werke AG	3/1/94–2/28/95	0

Individual differences between the US price and normal value may vary from the above percentage. The Department shall instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act.

(1) Because the rate for Wieland is zero, the Department shall not require cash deposits on shipments from Wieland;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.87 percent, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 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 order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). 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 terms of an APO is a violation which is subject to sanction. This administrative review and this 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 17, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–24352 Filed 9–20–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–814]

Pure Magnesium From Canada: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Carole Showers, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189 or 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1996, the Department published the preliminary results of administrative review of the antidumping duty order on pure magnesium from Canada (61 FR 39947). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Tariff Act'').

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this review. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule (''HTS''). HTS item numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

The review covers one Canadian manufacturer/exporter, Norsk Hydro Canada Inc. (''NHCI''), and the period February 20, 1992, through July 31, 1993.

Final Results of Review

In its preliminary results of administrative review, the Department stated that there were no appropriate U.S. sales to analyze which were associated with the entries covered by this review and hence, there was no basis for assessing antidumping duties on these entries. The Department received no comments regarding this finding. Therefore, as stated in the preliminary results, we will liquidate these entries without regard to antidumping duties.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for NHCI will be 0.00 percent, the rate established in the third administrative review of this order (61 FR 41772, August 12, 1996); (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 21 percent, the ''all others'' rate established in Pure Magnesium from Canada: Amendment of Final Determination of Sales at Less than Fair Value and Order in Accordance with Decision on Remand, 58 FR 62643 (November 29, 1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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 the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 16, 1996.

Robert S. La Russa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–24353 Filed 9–20–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–506]

Oil Country Tubular Goods From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part of the antidumping duty order.

SUMMARY: On July 19, 1996, the Department of Commerce (the Department) published the preliminary results of antidumping duty administrative review and intent to revoke order (in part) on oil country tubular goods (OCTG) from Canada (51 FR 21782; June 16, 1986). The review covers one manufacturer, IPSCO Inc. (IPSCO), and the period June 1, 1994, through May 31, 1995.

We gave interested parties an opportunity to comment on the preliminary results of review and intent to revoke order (in part). Since the Department received no comments, the final results remain unchanged from the preliminary results and we revoke the antidumping duty order with respect to IPSCO.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: David Genovese or Zev Primor, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 482–5254.

SUPPLEMENTARY INFORMATION:

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, as amended (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On June 21, 1995, IPSCO requested an administrative review of the antidumping duty order on OCTG from Canada. The Department initiated the review on July 14, 1995 (60 FR 36260), covering the period June 1, 1994, through May 31, 1995. On July 19, 1996, the Department published the preliminary results of review (61 FR 37720). The Department has now completed this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute (API) specification OCTG and all other pipe with the

following characteristics except entries which the Department determined through its end-use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the ALI or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the ALI or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the ALI or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests.

This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no comments. Accordingly, we have determined that a margin of zero percent exists for IPSCO for the period June 1, 1994 through May 31, 1995.

Based on information submitted by IPSCO during this and the two previous reviews (see Final Results of Antidumping Duty Administrative Review on Oil Country Tubular Goods from Canada, ((60 FR 35898; July 12, 1995) and (59 FR 34409; July 5, 1994)), we determine that IPSCO has met the requirements for revocation set forth in sections 353.25(a)(2) and 353.25(b) of the Department's regulations. IPSCO has demonstrated three consecutive years of sales at not less than normal value and has submitted the required certifications stating that it will not in the future sell OCTG at less than normal value and it agrees to its immediate reinstatement in the antidumping duty order if the Department concludes that IPSCO sold OCTG at less than normal value subsequent to revocation. Moreover, on the basis of no sales at less than normal value for a period of three consecutive years and the lack of any indication that IPSCO will make sales below normal value in the future, the Department concludes that IPSCO is not likely to sell subject merchandise at less than normal value in the future. Therefore, the Department is revoking the order with respect to IPSCO.

The Department will instruct the U.S. Customs Service to liquidate, without regard to antidumping duties, all shipments of subject merchandise produced by IPSCO and entered on or after June 1, 1994.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, other than shipments of subject merchandise produced by IPSCO, as provided by section 751(a)(1) of the Act: (1) For merchandise exported by manufacturers or 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 rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (2) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that rate established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (3) the ''all others'' rate will be 16.65 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 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). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: September 16, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–24354 Filed 9–20–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 091696E]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Crustacean Plan Team.

DATES: The meeting will be held on October 21, 1996, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Plan Team will discuss and may make recommendations to the Council on the following agenda items:

1. Report on the 1996 Northwestern Hawaiian Islands lobster fishery, including possible highgrading, misreporting, Vessel Monitoring System reporting of data, and enforcement concerns;
2. Consider whether to add information on the Hawaii deepwater shrimp fishery to the annual report, and consider possible management needs;
3. Report on the 1996 summer lobster research cruise; and
4. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to

Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: September 16, 1996.

Gary C. Matlock,

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

[FR Doc. 96–24247 Filed 9–20–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 091696C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a joint meeting of its Bottomfish and Seamount Groundfish Plan Team, Hawaii Bottomfish Advisory Panel, and Bottomfish Advisory Review Board.

DATES: The meeting will be held on October 9–10, 1996, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Plan Team will discuss and may make recommendations to the Council on the following agenda items:

1. Progress and/or constraints with specific recommendations in 1995 annual report;
2. Limited entry alternatives for the Mau Zone and moratorium on new entry for the Mau Zone in the Northwestern Hawaiian Islands (NWHI), including report from task force;
3. Address the ''yellow light'' condition for CPUE of Guam's bottomfish stocks;
4. Status of Department of Land and Natural Resources progress with management plan for overfished Main Hawaiian Island onaga and ehu;
5. Draft management plan for Main Hawaiian Island onaga and ehu stocks in Federal waters;
6. Plan for joint Guam-Northern Mariana Islands survey of baseline biological conditions for shallow-water emperor complex in northern islands of the Marianas; and
7. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: September 16, 1996.

Gary C. Matlock,

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

[FR Doc. 96–24248 Filed 9–20–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 091696D]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Pelagics Plan Team.

DATES: The meeting will be held on October 16–17, 1996, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Plan Team will discuss and may make recommendations to the Council on the following agenda items:

1. Draft amendment for the collection of pelagic data from U.S. domestic fisheries in the Pacific;
2. Plan for control date for all domestic Pacific pelagic fisheries;
3. Denial of single-council designation request;
4. Bycatch issues (turtles, albatross, sharks);
5. Progress and/or constraints with specific recommendations in the 1995 Annual Report;
6. Status of research programs; and
7. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: September 16, 1996.

Gary C. Matlock,

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

[FR Doc. 96–24249 Filed 9–20–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

September 18, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 65290, published on December 19, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all

of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 18, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1995, by the Acting Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 24, 1996, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	1,347,644 dozen.
340/640	2,810,985 dozen.
341	1,946,350 dozen.
347/348	2,388,349 dozen.
638/639	1,528,754 dozen.
641	695,699 dozen.
645/646	285,334 dozen.
847	333,639 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–24339 Filed 9–20–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

September 17, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62410, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 17, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1995, by the Acting Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 23, 1996, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
225	5,958,052 square meters.
338/339	1,292,048 dozen.
340/640	1,411,446 dozen.
341	922,166 dozen.
350/650	122,265 dozen.
351/651	491,196 dozen.
634/635	294,781 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–24340 Filed 9–20–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Application for Designation as a Contract Market in Ninety Percent Lean Boneless Futures, and a Proposal To Amend and To Recommence Trading in the Dormant Fifty Percent Lean Boneless Beef Trimmings Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed and amended commodity futures contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a futures contract market in a ninety percent lean boneless beef. In addition, the CME has submitted a proposal to amend its dormant fifty percent lean boneless beef trimmings futures contract and has filed a request to list new contract months for trading in that contract. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before October 23, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St. NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME fifty percent lean boneless beef trimmings and ninety percent lean boneless beef futures contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581, telephone 202–418–5273, or electronic mail: flinse@cftc.gov.

SUPPLEMENTARY INFORMATION: The Exchange currently is designated as a contract market in fifty percent lean boneless beef trimmings futures. That contract currently is dormant within the meaning of CFTC Regulation 5.2. In addition, as noted, the Exchange has applied for designation as a contract market in ninety percent lean boneless beef futures.

The proposed ninety percent lean boneless beef futures contract and the amended fifty percent lean boneless beef trimmings futures contract would provide for cash settlement of all open positions at the expiration of trading in each contract month.[1] For the fifty percent lean boneless beef trimmings futures contract, the cash settlement price would be based on daily weighted average price and volume of sales information reported by the United States Department of Agriculture (USDA) for fifty percent lean boneless beef FOB Omaha in the National Carlot Meat Report. For the ninety percent lean boneless beef futures contract, the cash settlement price would be based on USDA-reported daily weighted average price and volume of sales information for ninety percent lean boneless beef FOB Omaha and East Texas-Oklahoma. The cash settlement price for each expiring fifty and ninety percent boneless beef contract month would be the weighted average of the prices reported by the USDA for the last five days immediately preceding (and including) the last trading day on which the USDA reports both a daily weighted average price and a volume of sales that exceeds zero.[2]

The trading unit for both contracts would be 20,000 pounds. The maximum daily price fluctuation for both contracts would be $.030 per pound, which could be raised to $.045 per pound under certain conditions. For the fifty percent lean boneless beef trimmings futures contract, speculative position limits would be 1,250 contracts long or short in any contract month, except the expiring contract month, and 250 contracts as of the close of business on the fifth business day of the contract month. Speculative position limits for the ninety percent lean boneless beef futures contract would be 500 contracts long or short in any contract except the expiring contract month, and 100 contracts as of the close of business on the fifth business day of the contract month. Trading in expiring contract months would end on the tenth business day of the spot month for both contracts.

The Exchange indicates that the futures contracts are intended to respond to increased interest among cash market participants for mechanisms to manage price risk in view of the growing importance of boneless beef production and increased price volatility. In this respect, the CME indicates that the consumption of ground beef, which is produced by grinding boneless beef, has increased to over 50 percent from 25 percent of all beef consumed in the U.S. since 1975. The Exchange also notes that the yearly range of fifty-percent lean boneless beef prices has increased to 17 cents in 1995 from 3–5 cents per pound in the 1980s, while the annual range of ninety-percent lean boneless beef prices has increased to 50 cents in 1995 from 3–5 cents per pound in the 1980s. The Exchange believes that the futures contracts will offer risk management opportunities to a wide range of cash market participants.

On behalf of the Commission, the Division is requesting comment on the CME's proposals. In particular, the Division is seeking comments regarding the extent to which the proposed cash settlement prices will reflect the underlying cash market and the susceptibility of the proposed cash settlement prices to manipulation or distortion.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St. NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the Exchange may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CSCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St. NW., 20581 by the specified date.

Issued in Washington, DC, on September 17, 1996.

Paul Architzel,

Acting Director.

[FR Doc. 96–24272 Filed 9–20–96; 8:45 am]

BILLING CODE 6351–01–M

[1] The existing terms of the Exchange's dormant fifty percent lean boneless beef trimmings futures contract provide for physical delivery.

[2] The proposed rules do not require that the cash settlement period consist of the five consecutive days preceding and including the last trading day of each expiring contract month. If the USDA does not report both a weighted average price and non-zero trading volume for one or more of the last five consecutive days that precede (and include) the last trading day, the cash settlement price would be calculated using price and quantity information for the next preceding day(s) on which both the weighted average price and non-zero sales volume are reported by the USDA.

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Forms, and OMB Control Number: Validation of Public or Community Service Employment Performed by Retired Personnel Retired Under the Temporary Early Retirement Authority for Increased Retirement

Compensation, DD Form 2767, 0704–0357.

Type of Request: Reinstatement, with change.

Number of Respondents: 4,800.

Responses per Respondent: 1

Annual Responses: 4,800.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 800.

Needs and Uses: Public Law 102–484, Section 4464, required the Department of Defense to develop policy and procedures to validate and credit increased compensation for qualifying public and community service employment performed by retired personnel of the Armed Forces under the ''Temporary Early Retirement Authority Program.'' Public Law 103–337, Section 542, extended this program to the Coast Guard. This information collection, which uses the DD Form 2676, ''Validation of Public or Community Service Employment,'' will allow DoD and Coast Guard to collect necessary information to recompute retired pay when the participating member qualifies under this program. Respondents to this program will be public or community service employers. The data are submitted by the Defense Manpower Data Center to either the Defense Finance and Accounting Service (DFAS) or the Coast Guard Finance Center for update of final pay information files. When a member reaches age 62, the Finance Centers will recompute retirement pay, adding whatever public or community service employment was validated during the enhanced retirement qualification period.

Affected Public: Not-for-profit institutions; Federal Government; State, local, or tribal government.

Frequency: On occasion and annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 17, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24222 Filed 9–20–96; 8:45 am]

BILLING CODE 5000–04–M

[Transmittal No. 96–76]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–76, with attached transmittal and policy justification pages.

Dated: September 18, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

12 SEP 1996

In reply refer to:
I-04272/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-76, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Korea for defense articles and services estimated to cost $139 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-76

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$139 million
TOTAL	$139 million

(iii) Description of Articles or Services Offered:
This sale will provide funds for the purchase of spare parts under a Cooperative Logistics Supply Support Arrangement (CLSSA) requisition case (FMSO II) for the support of F/RF-4, F/RF-5, A/T-37, C-130 and F-16 aircraft; AN/FPS-117 and AN/FRN-45 radar systems; and AIM-7 and AIM-9 missile systems. These items are of U.S. origin and are being operated by the Republic of Korea.

(iv) Military Department: Air Force (KCG)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 12 SEP 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea - Cooperative Logistics Supply Support Arrangement

The Government of Korea has requested the purchase of spare parts under a Cooperative Logistics Supply Support Arrangement (CLSSA) requisition case (FMSO II) for the support of F/RF-4, F/RF-5, A/T-37, C-130 and F-16 aircraft; AN/FPS-117 and AN/FRN-45 radar systems; and AIM-7 and AIM-9 missile systems. These items are of U.S. origin and are being operated by the Republic of Korea. The estimated cost is $139 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The Republic of Korea needs these spare parts to maintain the aircraft, radar, and missile systems previously procured from the United States in a mission capable status.

The sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items of support will be from the many contractors providing similar items to the U.S. armed forces. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–24337 Filed 9–20–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–71]

36(b) Notification; Arms Sales

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–71, with attached transmittal and policy justification pages.

Dated: September 18, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

12 SEP 1996

In reply refer to:
I-04248/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-71, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Colombia for defense articles and services estimated to cost $169 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-71

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Colombia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 149 million
Other	$ 20 million
TOTAL	$ 169 million

(iii) Description of Articles or Services Offered: Twelve UH-60L utility helicopters, four spare T700 GE engines, 24 M60D door mounted machine guns, 920,000 rounds of 7.62MM (M80) ammunition, special test and ground support equipment, special tools and diagnostic equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment and U.S. Government and contractor technical and support services; follow-on support to include repair and overhaul of major helicopter components and assemblies, long term supply support, update of publications and technical documentation and other related elements of logistics to ensure long term supportability of the program.

(iv) Military Department: Army (UTN)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(vii) Date Report Delivered to Congress: 12 SEP 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Colombia - UH-60L Utility Helicopters

The Government of Colombia has requested the purchase of 12 UH-60L utility helicopters, four spare T700 GE engines, 24 M60D door mounted machine guns, 920,000 rounds of 7.62MM(M80) ammunition, special test and ground support equipment, special tools and diagnostic equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment and U.S. Government and contractor technical and support services; follow-on support to include repair and overhaul of major helicopter components and assemblies, long term supply support, update of publications and technical documentation and other related elements of logistics to ensure long term supportability of the program. The estimated cost is $169 million.

This sale will contribute to the foreign policy and national security of the United States by helping Colombia improve its capability to fight the war on drugs. These 12 helicopters will be in addition to 14 already delivered.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be United Technology, Sikorsky Aircraft, Stratford, Connecticut. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–24338 Filed 9–20–96; 8:45 am]
BILLING CODE 5000–04–C

Renewal of the Defense Intelligence Agency Scientific Advisory Board; Notice

SUMMARY: The Defense Intelligence Agency Scientific Advisory Board (DIASAB) has been renewed in consonance with the public interest, and in accordance with the provisions of Public Law 92–463, the ''Federal Advisory Committee Act.''

The DIASAB provides scientific and technical expertise and advice to the Secretary of Defense and the Director, Defense Intelligence Agency on current and long-term operational and intelligence matters covering the total range of the mission of the Defense Intelligence Agency.

The Committee will continue to be composed of 30 to 36 members from government agencies, business and industrial corporations, private consultants, and the academic community. Efforts will be made to ensure that there is a fairly balanced membership in terms of the functions to be performed and the interest groups represented.

For further information regarding the DIASAB, contact: Major Mike Lamb, Defense Intelligence Agency, telephone: 202–231–4930.

Dated: September 16, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24219 Filed 9–20–96; 8:45 am]

BILLING CODE 5000–04–M

Renewal of the Joint Advisory Committee on Nuclear Weapons Surety; Notice

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety (JACNWS) has been renewed in consonance with the public interest, and in accordance with the provisions of Public Law 92–463, the ''Federal Advisory Committee Act.''

The JACNWS provides advice and recommendations to the Secretary of Defense and the Secretary of Energy on nuclear weapons systems surety matters. The committee undertakes studies and prepares reports on national policies and procedures to ensure the safe handling, stockpiling, maintenance, disposition and risk reduction of nuclear weapons.

The Committee will continue to be composed of four to seven members, both government and non-government individuals, who are acclaimed experts in nuclear weapons surety measures. Efforts will be made to ensure that there is a fairly balanced membership in terms of the functions to be performed and the interest groups represented.

For further information regarding the JACNWS, contact: Mr. Bill Daitch, Defense Special Weapons Agency, telephone: 703–325–0581.

Dated: September 16, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24218 Filed 9–20–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 9 October 1996.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: September 17, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24220 Filed 9–20–96; 8:45 am]

BILLING CODE 5000–04–M

Group of Advisors to the National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Strategy and Requirements.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Group of Advisors to the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATE: September 27, 1996.

ADDRESS: National Security Education Program Office, 1101 Wilson Boulevard—Suite 1210, Arlington, Virginia 22209–2248.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: collier@nsep.policy.osd.mil

SUPPLEMENTARY INFORMATION: Short notification of this meeting is due to a need to address new program requirements contained in the 1997 Defense Authorization Bill recently passed by Congress. The Group of Advisors meeting is open to the public.

Dated: September 18, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24335 Filed 9–20–96; 8:45 am]

BILLING CODE 5000–04–M

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: October 16, 1996 from 0900 to approximately 1735 and October 17, 1996 from 0800 to approximately 1240.

Place: Federal Highway Administration Conference Room, 901 N. Stuart Street, Ste. 304, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Kimberly Kay, 8000 Westpark Drive, Suite 400, McLean, VA 22102, or telephone 703 506–1400 extension 552.

Dated: September 17, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–24221 Filed 9–20–96; 8:45 am]

BILLING CODE 5000–04–M

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 190. This bulletin lists revisions in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 190 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: October 1, 1996.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 189. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of revisions of per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office.

The text of the Bulletin follows:

Dated: September 18, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

BILLING CODE 5000–04–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA:				
ADAK 2/	10	34	44	10/01/91
ADAK NAVAL AIR STATION	10	34	44	10/01/91
ADAK NAVAL SECURITY GRP ACT	10	34	44	10/01/91
ANAKTUVUK PASS	83	57	140	12/01/90
ANCHORAGE				
05/05 -- 09/30	147	70	217	05/01/96
10/01 -- 05/04	76	64	140	05/01/96
ANCHORAGE NAVAL RESERVE CENTER				
05/05 -- 09/30	147	70	217	05/01/96
10/01 -- 05/04	76	64	140	05/01/96
ANIAK	73	36	109	07/01/91
ATQASUK	129	86	215	12/01/90
BARROW	110	76	186	03/01/96
BETHEL	84	54	138	05/01/96
BETTLES	65	45	110	12/01/90
COLD BAY	110	54	164	07/01/93
COLDFOOT	95	59	154	10/01/92
CORDOVA	74	76	150	03/01/96
CRAIG				
05/01 -- 08/31	97	96	193	03/01/96
09/01 -- 04/30	75	94	169	03/01/96
DENALI NATIONAL PARK	113	68	181	05/01/94
DILLINGHAM	85	64	149	11/01/93
DUTCH HARBOR-UNALASKA	110	77	187	08/01/96
EARECKSON AIR STATION	60	56	116	03/01/96
EIELSON AFB				
05/15 -- 09/15	112	59	171	03/01/96
09/16 -- 05/14	70	55	125	03/01/96
ELMENDORF AFB				
05/05 -- 09/30	147	70	217	05/01/96
10/01 -- 05/04	76	64	140	05/01/96
EMMONAK	62	61	123	10/01/93
FAIRBANKS				
05/15 -- 09/15	112	59	171	03/01/96
09/16 -- 05/14	70	55	125	03/01/96
FALSE PASS	80	37	117	06/01/91
FT. GREELEY	60	56	116	03/01/96
FT. RICHARDSON				
05/05 -- 09/30	147	70	217	05/01/96
10/01 -- 05/04	76	64	140	05/01/96
FT. WAINWRIGHT				
05/15 -- 09/15	112	59	171	03/01/96
09/16 -- 05/14	70	55	125	03/01/96
GUSTAVUS	70	62	132	03/01/96
HOMER				
05/01 -- 09/30	115	68	183	03/01/96

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
10/01 -- 04/30	90	65	155	03/01/96
JUNEAU				
05/01 -- 09/30	89	82	171	03/01/96
10/01 -- 04/30	78	80	158	03/01/96
KATMAI NAT'L PARK	89	59	148	12/01/90
KENAI-SOLDOTNA				
05/01 -- 09/30	109	74	183	03/01/96
10/01 -- 04/30	76	71	147	03/01/96
KETCHIKAN				
05/16 -- 09/15	86	72	158	03/01/96
09/16 -- 05/15	73	70	143	03/01/96
KING COVE	85	69	154	03/01/96
KING SALMON	77	68	145	03/01/96
KLAWOCK				
05/01 -- 08/31	97	96	193	03/01/96
09/01 -- 04/30	75	94	169	03/01/96
KODIAK	79	68	147	03/01/96
KOTZEBUE	133	87	220	05/01/93
KULIS AGS				
05/05 -- 09/30	147	70	217	05/01/96
10/01 -- 05/04	76	64	140	05/01/96
KUPARUK OILFIELD	75	52	127	12/01/90
METLAKATLA				
06/01 -- 10/01	95	58	153	02/01/94
10/02 -- 05/31	72	56	128	02/01/94
MURPHY DOME				
05/15 -- 09/15	112	59	171	03/01/96
09/16 -- 05/14	70	55	125	03/01/96
NELSON LAGOON	102	39	141	06/01/91
NOATAK	133	87	220	05/01/93
NOME	86	67	153	05/01/96
NOORVIK	133	87	220	05/01/93
PETERSBURG	77	62	139	03/01/96
POINT HOPE	99	61	160	12/01/90
POINT LAY	106	73	179	12/01/90
PRUDHOE BAY-DEADHORS	73	60	133	11/01/93
SAND POINT	64	67	131	08/01/94
SEWARD				
05/16 -- 08/31	115	60	175	03/01/96
09/01 -- 05/15	83	57	140	03/01/96
SHUNGNAK	133	87	220	05/01/93
SITKA-MT. EDGECOMBE				
04/01 -- 10/31	94	58	152	03/01/96
11/01 -- 03/31	83	57	140	03/01/96
SKAGWAY				
05/16 -- 09/15	86	72	158	03/01/96
09/16 -- 05/15	73	70	143	03/01/96

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
SPRUCE CAPE	79	68	147	03/01/96
ST. GEORGE	100	39	139	06/01/91
ST. MARY'S	77	59	136	06/01/93
ST. PAUL ISLAND	62	63	125	10/01/93
TANANA	86	67	153	05/01/96
TOK				
05/01 -- 09/30	70	51	121	03/01/96
10/01 -- 04/30	50	49	99	03/01/96
UMIAT	97	63	160	12/01/90
VALDEZ				
05/01 -- 09/14	99	66	165	03/01/96
09/15 -- 04/30	83	64	147	03/01/96
WAINWRIGHT	90	75	165	12/01/90
WALKER LAKE	82	54	136	12/01/90
WRANGELL				
05/16 -- 09/15	86	72	158	03/01/96
09/16 -- 05/15	73	70	143	03/01/96
YAKUTAT	77	58	135	11/01/93
[OTHER]	60	56	116	03/01/96
AMERICAN SAMOA:				
AMERICAN SAMOA	73	48	121	11/01/94
GUAM:				
ANDERSEN AFB	190	85	275	05/01/96
GUAM 2/	190	85	275	05/01/96
GUAM NAVAL AIR STATION	190	85	275	05/01/96
GUAM NAVAL COMM STATION	190	85	275	05/01/96
GUAM US NAVAL HOSPITAL	190	85	275	05/01/96
NAVAL STATION	190	85	275	05/01/96
HAWAII:				
CAMP H M SMITH	110	70	180	07/01/96
EASTPAC NAVAL COMP TELE AREA	110	70	180	07/01/96
FT. DERUSSEY	110	70	180	07/01/96
FT. SHAFTER	110	70	180	07/01/96
HICKAM AFB	110	70	180	07/01/96
HONOLULU NAV & MC RESERVE CTR	110	70	180	07/01/96
ISLE OF HAWAII: HILO	74	60	134	07/01/96
ISLE OF HAWAII: OTHER	105	63	168	07/01/96
ISLE OF KAUAI	114	75	189	07/01/96
ISLE OF KURE	10	8	18	07/01/96
ISLE OF MAUI				
04/16 -- 12/14	100	63	163	07/01/96
12/15 -- 04/15	113	65	178	07/01/96
ISLE OF OAHU	110	70	180	07/01/96
KANEOHE BAY MC BASE	110	70	180	07/01/96
KEKAHA PACIFIC MISSILE RANGE FAC	114	75	189	07/01/96
KILAUEA MILITARY CAMP	74	60	134	07/01/96

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
LULUALEI NAVAL MAGAZINE	110	70	180	07/01/96
PEARL HARBOR AFLOAT TNG GRP, MIDDLE	110	70	180	07/01/96
PEARL HARBOR NAVAL COMPLEX	110	70	180	07/01/96
PEARL HARBOR NAVAL SUBMARINE BASE	110	70	180	07/01/96
PEARL HARBOR NAVY PUBLIC WORKS CTR	110	70	180	07/01/96
SCHOFIELD BARRACKS	110	70	180	07/01/96
WHEELER ARMY AIRFIELD	110	70	180	07/01/96
[OTHER]	79	62	141	06/01/93
JOHNSTON ATOLL:				
JOHNSTON ATOLL	22	24	46	07/01/96
MIDWAY ISLANDS:				
MIDWAY ISLAND NAVAL AIR FACILITY	10	8	18	07/01/96
MIDWAY ISLANDS	10	8	18	07/01/96
NORTHERN MARIANA ISLANDS:				
ROTA	83	90	173	05/01/96
SAIPAN	138	89	227	05/01/96
TINIAN	61	72	133	06/01/95
[OTHER]	20	13	33	12/01/90
PUERTO RICO:				
BAYAMON				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
CAROLINA				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
DORADO				
04/01 -- 12/21	164	83	247	10/01/96
12/22 -- 03/31	300	96	396	10/01/96
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]				
05/01 -- 11/23	70	64	134	10/01/96
11/24 -- 04/30	114	68	182	10/01/96
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
LUIS MUNOZ MARIN IAP AGS				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
MAYAGUEZ	93	70	163	11/01/95
PONCE	107	58	165	10/01/96
ROOSEVELT ROADS 2/				
05/01 -- 11/23	70	64	134	10/01/96
11/24 -- 04/30	114	68	182	10/01/96
ROOSEVELT ROADS NAVAL STATION				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 -- 11/23	70	64	134	10/01/96
11/24 -- 04/30	114	68	182	10/01/96
SABANA SECA				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
SABANA SECA US NAVAL SEC GRP ACT				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
SAN JUAN				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
SAN JUAN US NAVAL RESERVE STATION				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
[OTHER]	70	50	120	10/01/96
VIRGIN ISLANDS (U.S.):				
ST. CROIX	127	78	205	08/01/96
ST. JOHN				
04/16 -- 12/21	242	89	331	08/01/96
12/22 -- 04/15	391	100	491	08/01/96
ST. THOMAS				
04/12 -- 12/15	168	93	261	08/01/96
12/16 -- 04/11	268	103	371	08/01/96
WAKE ISLAND:				
WAKE ISLAND	40	35	75	10/01/96

[FR Doc. 96–24336 Filed 9–20–96; 8:45 am]
BILLING CODE 5000–04–C

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Invention

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the patent application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

U.S. Patent Application Serial No. 08/430,995: NONTOXIC ANTIFOULING SYSTEMS; filed April 28, 1995.

Dated: September 11, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–24233 Filed 9–20–96; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Availability of Invention for Licensing; Government-Owned Invention

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application entitled ''Optical Sensor System Utilizing Bragg Grating Sensors,'' filed June 28, 1996, Navy Case No. 76,150.

Dated: September 11, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–24234 Filed 9–20–96; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Availability of Invention for Licensing; Government-Owned Invention

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application entitled ''INTELLIGENT HYPERSENSOR PROCESSING SYSTEM (IHPS)'' filed July 12, 1996, Navy Case No. 77,409.

Dated: September 11, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–24235 Filed 9–20–96; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Intent to Grant Partially Exclusive Patent License; CIDRA Corporation

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to CIDRA Corporation, a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patent No. 5,361,130 ''Fiber Grating-Based Sensing System With Interferometric Wavelength-Shift Detection,'' issued November 1, 1994 and U.S. Patent Application ''Optical Sensor System Utilizing Bragg Grating Sensors'' filed June 28, 1996, in the field of Oil, Gas and Geothermal Exploration and Production Markets.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: September 11, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–24236 Filed 9–20–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 22, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. 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: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to

submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 17, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Complaint Procedures for State Administered Programs/IASA and Public Notification of Procedures.

Frequency: On Occasion.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 4,560.

Abstract: The Complaint procedures are necessary in order to guarantee the public and local education agencies due process in the consideration of potential violations by an agency. The information is to be used by the SEA in order to identify the type and nature of complaint and to help the SEA resolve the complaint.

[FR Doc. 96–24265 Filed 9–20–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 23, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. 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: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 17, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Integrated Postsecondary Education Data System (IPEDS) 1996 through 1997/1998.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 37,234.

Burden Hours: 92,980.

Abstract: The IPEDS provides information on postsecondary education—it's providers, enrollments, completions, and finances in addition to other information. The recent publication of final regulations for Student Right-to-Know and changes in financial accounting standards for nonprofit institutions have made it necessary for NCES to modify the IPEDS data collection for 1996 and 1997 to help institutions adapt to these changes.

[FR Doc. 96–24266 Filed 9–20–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 96–15; Plasma Physics Junior Faculty Development Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Energy Research (OER), U.S. Department of Energy hereby announces its interest in receiving grant applications for support under its Plasma Physics Junior Faculty Development Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical plasma physics research and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the individual research programs of exceptionally talented scientists and engineers early in their careers. Awards made under this program will help to maintain the vitality of university plasma physics research and assure continued excellence in the teaching of plasma physics and related disciplines. DOE will make up to five awards during

FY 1997, depending on the number of meritorious applications and the availability of appropriated funds.

DATES: To permit timely consideration for awards in FY 1997, formal applications in response to this notice should be received on or before January 14, 1997.

ADDRESSES: Completed formal applications referencing Program Notice 96–15 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 96–15. The above address must also be used when submitting applications by U. S. Postal Service Express, and commercial mail delivery service or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald McKnight, U.S. Department of Energy, Office of Fusion Energy Sciences, Science Division, ER–55, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–3421.

SUPPLEMENTARY INFORMATION: The Plasma Physics Junior Faculty Development Program is being started in FY 1997. A principal goal of this program is to identify exceptionally talented plasma faculty members early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is, therefore, restricted to tenure-track regular academic faculty investigators who are conducting experimental or theoretical plasma physics research. Emphasis is to be placed on basic plasma science research. For applications considered for funding, certification of the status of the applicant as a tenure-track regular academic faculty member by the head of the applicant's academic department or other university/college certifying official will be required before the grant is awarded.

It is anticipated that annual funding levels up to $150,000 per award may be made available for grants under this notice during FY 1997, contingent upon the availability of appropriated funds. Funding for equipment above this level will be considered on a case-to-case basis. The number of awards and range of funding will depend on the number of applications received and selected for award. Multiple year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. These grants will not normally be renewed after the project period is completed; grantees may, however, submit new grant applications to continue their research using the usual departmental grant application process. Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. The Application Guide is available from the U.S. Department of Energy, Office of Fusion Energy Sciences, Office of Energy Research, ER–55, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone requests may be made by calling (301) 903–3421. Electronic access to ER's Financial Assistance Guide is possible via the Internet using the following Web site address:

http://www.er.doe.gov/production/grants/grants.html

The catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on September 10, 1996.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 96–24298 Filed 9–20–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER96–2350–000]

CMS Electric Marketing Company; Notice of Issuance of Order

September 18, 1996.

CMS Electric Marketing Company (CMS Marketing) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, CMS Marketing requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CMS Marketing. On September 6, 1996, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 6, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protect the Commission's blanket approval of issuances of securities or assumptions of liabilities by CMS Marketing 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 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, CMS Marketing is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object, within the corporate purposes of CMS Marketing, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CMS Marketing's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 7, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24331 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2320–000]

EMC Gas Transmission Company; Notice of Issuance of Order

September 18, 1996.

EMC Gas Transmission Company (EMC) submitted for filing a rate schedule under which EMC will engage in wholesale electric power and energy

transactions as a marketer. EMC also requested waiver of various Commission regulations. In particular, EMC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by EMC.

On September 3, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EMC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EMC is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EMC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 3, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24330 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–065]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

September 17, 1996.

Take notice that on September 10, 1996, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Suite 800, Washington, D.C. 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of 1,000,000 MMBtu of natural gas from Frontier's gas storage inventory on an ''in place'' basis to Rainbow Gas Company.

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985, Order, Frontier is ''authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries for gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement.''

Any person desiring to be heard or to make a protest with reference to said filing should, within ten days of the publication of such notice in the Federal Register, file with the Federal Energy Regulatory Commission (888 1st Street, N.E., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24254 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–066]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

September 17, 1996.

Take notice that on September 10, 1996, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW, Suite 800, Washington, DC 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 50,000 MMBtu, not to exceed 5 Bcf of Frontier's gas storage inventory on an ''as metered'' basis to Rainbow Gas Company, for term ending September 30, 1997.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is ''authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter.''

Any person desiring to be heard or to make protest with reference to said filing should, within 10 days of the publication of such notice in the Federal Register, file with the Federal Energy Regulatory Commission (888 1st Street NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24255 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1387–000]

New Energy Ventures, Inc.; Notice of Issuance of Order

September 18, 1996.

New Energy Ventures, Inc. (New Energy) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, New Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by New Energy. On September 6, 1996, the Commission issued an Order Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 6, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket

approval of issuances of securities or assumptions of liabilities by New Energy 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 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, New Energy is hereby authorized, pursuant to section 204 of the FPA, to issue securities and to assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of New Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approved of New Energy's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 7, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24328 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–723–000]

Northwestern Pipeline Corporation; Errata to Notice of Filing

September 17, 1996.

The Commission's Notice of Filing in the above-docketed proceeding issued August 23, 1996 and published in the Federal Register on August 23, 1996 (61 FR 45956), should have stated the comment period as follows:

Comment date: September 13, 1996, in accordance with Standard Paragraph F at the end of this notice.

Because the original date has expired, the date for filing interventions and comments is extended to and including September 24, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24334 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2556–000]

Peabody POWERTRADE, Inc.; Notice of Issuance of Order

September 18, 1996.

Peabody POWERTRADE, Inc. (Peabody) submitted for filing a rate schedule under which Peabody will engage in wholesale electric power and energy transactions as a marketer. Peabody also requested waiver of various Commission regulations. In particular, Peabody requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Peabody.

On September 9, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Peabody 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 385.214).

Absent a request for hearing within this period, Peabody is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Peabody's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 9, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24332 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2303–000]

Power Providers, Inc.; Notice of Issuance of Order

Power Providers, Inc. (PPI) submitted for filing a rate schedule under which PPI will engage in wholesale electric power and energy transactions as a marketer. PPI also requested waiver of various Commission regulations. In particular, PPI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by PPI.

On September 3, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PPI 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 385.214).

Absent a request for hearing within this period, PPI is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PPI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 3, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24329 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–785–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

September 17, 1996.

Take notice that on September 12, 1996, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP96–785–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install an additional 10-inch meter run with associated valves and tubing at existing M&R No. 953 located in Middlesex County, New Jersey under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to install the additional meter run to increase delivery capacity at M&R No. 953 as requested by New Jersey Natural Gas Company (New Jersey Natural), an existing Texas Eastern customer. Texas Eastern states that New Jersey Natural would reimburse Texas Eastern for 100% of the cost and expenses it would incur for installing the meter run. Such cost and expenses are estimated to be approximately $84,000.

Texas Eastern states that the proposed installation would have no effect on its peak day or annual deliveries and that its proposal would be accomplished without detriment or disadvantage to its other customers.

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 § 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. 96–24258 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–776–000]

Williams Natural Gas Company; Notice of Application

September 17, 1996.

Take notice that on September 9, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–776–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate about 9.5 miles of 20-inch pipeline loop extension in Labette and Montgomery Counties, Kansas and about 3.2 miles of 20-inch pipeline loop extension in Christian County, Missouri, and the rolled-in rate treatment of these facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

WNG proposes to extend the existing Southern Trunk by constructing the above facilities in order to provide additional reliability of all customers east of Saginaw compressor station and to continue to maintain reliable and consistent service. It is estimated by WNG that the cost would be $6.1 million to be paid from available funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 8, 1996, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and 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 WNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24257 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC96–13–000, et al.]

IES Utilities Inc., et al.; Electric Rate and Corporate Regulation Filings

September 16, 1996.

Take notice that the following filings have been made with the Commission.

1. IES Utilities Inc. Interstate Power Company Wisconsin Power & Light Company South Beloit Water, Gas & Electric Company Heartland Energy Services and Industrial Energy Applications, Inc.

[Docket No. EC96–13–000]

Take notice that on September 12, 1996, IES Utilities Inc. (IES), Interstate Power Company (IPC), Wisconsin Power & Light Company (WPL), South Beloit Water, Gas & Electric Company (South Beloit), Heartland Energy Services (HES) and Industrial Energy Applications, Inc. (IEA) (collectively, the Applicants) submitted for filing pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, a Third Supplemental Joint Application for Authorization and Approval of Merger.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power and Light Company

[Docket No. EL96–29–001]

Take notice that on August 30, 1996, Wisconsin Power and Light Company tendered for filing its refund report in the above-referenced proceeding.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Company

[Docket No. ER96–2943–000]

Take notice that on September 9, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Western Power Services, Inc.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Company

[Docket No. ER96–2944–000]

Take notice that on September 9, 1996, The Montana Power Company (Montana), tendered for filing a revised Appendix 1 as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96–501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

A copy of the filing has been served upon BPA.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER96–2945–000]

Take notice that on September 9, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Morgan Stanley Capital Group, 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 28, 1996.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER96–2946–000]

Take notice that on September 9, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Coral Power, L.L.C. 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 September 1, 1996.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER96–2947–000]

Take notice that on September 9, 1996, PECO Energy Company (PECO), filed a Service Agreement dated September 4, 1996 with Virginia Electric and Power Company (VEPCO) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds VEPCO as a customer under the Tariff.

PECO requests an effective date of September 4, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to VEPCO and to the Pennsylvania Public Utility Commission.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Public Service Company

[Docket No. ER96–2948–000]

Take notice that on September 9, 1996, Southwestern Public Service Company (SPS), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, an Electric Power Service Agreement between Progress Power Marketing, Incorporated (Progress) and SPS. The agreement allows for the parties to purchase and sell electric energy from one another at market based rates.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Puget Sound Power & Light Company

[Docket No. ER96–2949–000]

Take notice that on September 9, 1996, Puget Sound Power & Light Company, tendered for filing an agreement amending its wholesale for resale power contract with the Port of Seattle (Purchaser). A copy of the filing was served on Purchaser.

Puget states that the agreement changes the term of the wholesale for resale power contract.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER96–2950–000]

Take notice that on September 10, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and AIG Trading Corporation.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to AIG Trading Corporation under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and AIG Trading Corporation request waiver of the Commission's sixty-day notice requirement to permit an effective date of October 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER96–2952–000]

Take notice that on September 9, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 3 to add AIG Trading Corporation, American Municipal Power-Ohio, Inc., Cinergy Services, Inc., Delhi Energy Services, Inc., Engelhard Power Marketing, Inc., and Pennsylvania Power & Light Company as non-firm point-to-point customers under the Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is August 6, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Pool

[Docket No. ER96–2953–000]

Take notice that on September 10, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Aquila Power Corporation (Aquila). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would

permit Aquila to join the over 100 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Aquila a Participant in the Pool. NEPOOL requests an effective date of October 1, 1996 for commencement of participation in the Pool by Aquila.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Houston Lighting & Power Company

[Docket No. ER96–2954–000]

Take notice that on September 10, 1996, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Vitol Gas & Electric, L.L.C. for Economy Energy Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of September 2, 1996.

Copies of the filing were served on Vitol and the Public Utility Commission of Texas.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Sierra Pacific Power Company

[Docket No. ER96–2955–000]

Take notice that on September 10, 1996, Sierra Pacific Power Company (Sierra), tendered for filing pursuant to 205 of the Federal Power Act (the Act) and 18 CFR Part 35 *et seq.* three revisions to the General Transfer Agreement (GTA) between Sierra and Bonneville Power Administration (BPA).

Sierra states that the first revision would add a new delivery point for the transmission service rendered under the GTA. Sierra proposes the revision to be made effective immediately after the statutory notice period, *i.e.*, as of November 10, 1996.

According to Sierra, the second revision would reduce the total monthly local facilities set forth in the GTA from $151,163 to $133,289 to reflect actual costs of the facilities associated with the charge. Sierra requests that the revision be made effective retroactively back to October 31, 1995, the date the charge was initially made effective.

Sierra states that the third revision would reflect the updated forecast provided by BPA of BPA's monthly peak demand under the GTA. Sierra requests that the third revision be made effective immediately after the statutory notice period, *i.e.*, as of November 10, 1996.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Power and Light Company

[Docket No. ER96–2956–000]

Take notice that on September 10, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated August 19, 1996 establishing VTEC Energy, 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 19, 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 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Portland General Electric Company

[Docket No. ER96–2959–000]

Take notice that on September 9, 1996, Portland General Electric Company (PGE), tendered for filing under PGE Rate Schedule FERC No. 192 additional information pertaining to PGE's original obligation under the Competitive Adjustment clause of the original Power Sales Agreement. As such, PGE hereby submits a Letter of Understanding between PGE and the Canby Utility Board (CUB) to the Commission noting that the sum of $254,071 will be owned to CUB by PGE. This payment, due on or before August 1, 1997, will reflect the total competitive adjustment payment due.

PGE respectfully requests the Commission accept the information for filing effective November 7, 1996.

A copy of this filing was caused to be served upon the Canby Utility Board and the Oregon Public Utility Commission.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Houston Lighting & Power Company

[Docket No. ER96–2960–000]

Take notice that on September 9, 1996, Houston Lighting & Power Company (HL&P), tendered for filing a revised tariff to provide open-access transmission service to, from and over certain HVDC interconnections (TFO Tariff) and to supersede HL&P's current FERC Electric Tariff, First Revised Original Volume No. 1. HL&P states that the revised TFO Tariff offers point-to-point transmission service as required by the Commission's Orders in Docket No. EL79–8, *et al.*, on terms and conditions that are also consistent with the *pro forma* tariff adopted by the Commission in Order No. 888. The TFO Tariff also offers ancillary services consistent with the services offered by HL&P for transactions also occur wholly within the Electric Reliability Council of Texas. HL&P has proposed a rate reduction for transmission service under the TFO Tariff. Because the revised tariff filing reduces the rate for service, HL&P has requested a waiver to permit the revised TFO Tariff to become effective as of September 10, 1996.

HL&P states that the tariff has been served on the parties to Docket No. EL79–8 and on the Public Utility Commission of Texas.

Comment date: September 30, 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. 96–24327 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL96–72–000, et al.]

Pennsylvania Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 17, 1996.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power Company

[Docket No. EL96–72–000]

Take notice that on August 23, 1996, Pennsylvania Power Company tendered for filing a motion to compel unbundled transmission customer to make withheld payments owned pursuant to

rates placed into effect by the Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Mock Energy Services, L.P.

[Docket No. ER95–300–008]

On August 22, 1996, Mock Energy Services, L.P. filed a notice of succession changing its name from Mock Resources, Inc. to Mock Energy Services, L.P.

Comment date: Within 15 days after the date of publication in theFederal Register, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER95–1383–002]

Take notice that on August 29, 1996, Virginia Electric and Power Company (Virginia Power) tendered for fling a revised Refund Report in the above-referenced docket.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company

[Docket No. ER96–2342–001]

Take notice that on September 3, 1996, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company pursuant to the Commission's August 19, 1996, letter order tendered for filing title pages renaming each of their respective Coordination Sales Tariff CST–1 as Coordination Sales and Reassignment of Transmission Rights tariff CSRT–1.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Anoka Electric Cooperative

[Docket No. ER96–2387–000]

Take notice that on August 26, 1996, Anoka Electric Cooperative (Anoka) submitted for filing an amendment to its July 12, 1996, filing of an initial rate schedule. Anoka states that the purpose of the amendment is to provide justification for the rate in the Power Sales Agreement between Anoka and Elk River Municipal Utilities.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER96–2961–000]

Take notice that on September 11, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 4 to add Heartland Energy Services to the Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is August 13, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER96–2962–000]

Take notice that on September 11, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to Calpine Power Services Company (Calpine) pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on September 12, 1996.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER96–2963–000]

Take notice that on September 11, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to South Carolina Electric & Gas Company pursuant to its open access transmission tariff (the T–4 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on September 12, 1996.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Enserco Energy Inc.

[Docket No. ER96–2964–000]

Take notice that on September 11, 1996, Enserco Energy Inc. (Enserco), tendered for filing an application asking for blanket authorization and certain waivers of the Commission's Regulation to enable it to act as a power marketer. Enserco asks that these authorizations and waivers be made effective within 60 days of its filing.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Company

[Docket No. ER96–2965–000]

Take notice that on September 11, 1996, Central Power and Light Company (CPL), submitted an unexecuted Service Agreement, dated September 6, 1996, with WestPlains Energy-Colorado (WPE-Colorado) establishing WPE-Colorado as a customer under the terms of CPL's Coordination Sales Tariff CST–1 (CST–1 Tariff); and eight unexecuted Service Agreements, each dated August 1, 1996, establishing Destec Energy, Inc. (Destec), Vitol Gas & Electric L.L.C. (Vitol), Missouri Public Service (Missouri), WestPlains Energy-Kansas (WPE-Kansas), Acquila Energy Marketing (Acquila), Western Power Services, Inc. (Western), Coral Energy Resources, L.P. (Coral), and Calpine Power Services Company (Calpine) as customers under the CST–1 Tariff.

CPL requests an effective date of August 1, 1996 for the agreement with Destec, of September 6, 1996 for the agreement with WPE-Colorado and of August 12, 1996 for the agreements with the other six customers. Accordingly, CPL seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WPE-Colorado, Destec, Vitol, Missouri, WPE-Kansas, Acquila, Western, Coral, Calpine and the Public Utility Commission of Texas.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. XENERGY, Inc.

[Docket No. ER96–2966–000]

Take notice that on September 11, 1996, XENERGY, Inc. (XENERGY), tendered for filing with the Federal Energy Regulatory Commission Rate Schedule No. 1, which permits XENERGY to make wholesale power sales at market-based rates.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Soyland Power Cooperative, Inc.

[Docket No. ER96–2967–000]

Take notice that on September 12, 1996, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). This is one of eight initial rate filings and a petition for waiver of requirements under Orders No. 888 and 889 that Soyland made simultaneously to reflect its change in status to a Commission-regulated ''public utility'' from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service.

The filing consists of a Power Purchase and Sale Agreement dated April 10, 1995 between Soyland and LG&E Power Marketing, Inc. (LPM), pursuant to which the parties may notify each other from time to time that amounts of capacity and/or energy are available to purchase, sale or exchange. Soyland is not currently involved in any sale or exchange under the LPM Power Purchase and Sale Agreement and will not, in the future, engage in any transactions in which it will make any such sales or exchanges.

Copies of the filing were served upon LPM, Illinois Power Company and the Illinois Commerce Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Soyland Power Cooperative, Inc.

[Docket No. ER96–2968–000]

Take notice that on September 12, 1996, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). This is one of eight initial rate filings and a petition for waiver of requirements under Orders No. 888 and 889 that Soyland made simultaneously to reflect its change in status to a Commission-regulated ''public utility'' from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service.

The filing consists of an Enabling Agreement dated October 10, 1995, between Soyland and Enron Power Marketing, Inc. (Enron), pursuant to which the parties may notify each other from time to time that amounts of capacity and/or energy are available for purchase, sale or exchange. The Commission authorize sales by Enron pursuant to the Enabling Agreement under Enron's Rate Schedule No. 1, in Docket No. ER94–24. Soyland is not currently engaged in any transactions under the Energy Agreement and will not, in the future, engage in any transactions in which it would sell or exchange power or energy under this Agreement.

Copies of the filing were served upon Enron and the Illinois Commerce Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Soyland Power Cooperative, Inc.

[Docket No. ER96–2969–000]

Take notice that on September 12, 1996, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). This is one of eight initial rate filings and a petition for waiver of requirements under Orders No. 888 and 889 that Soyland made simultaneously to reflect its change in status to a Commission-regulated ''public utility'' from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service.

The filing consists of a Concept Agreement dated April 19, 1996 between Soyland and Southwestern Electric Cooperative, Inc. (Southwestern), pursuant to which Soyland makes available to Southwestern up to 75 MW of ''Participation Power'' until September 30, 1996. ''Participation Power'' means that Southwestern may schedule Soyland's capacity and energy available from Central Illinois Public Service Commission (CIPS), pursuant to the February 11, 1996 Power Supply and Transmission Services Agreements between Soyland and CIPS, to the extent that such capacity is available, or as otherwise agreed to by CIPS.

Copies of the filing were served upon Southwestern, CIPS, Illinois Power Company and the Illinois Commerce Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Soyland Power Cooperative, Inc.

[Docket No. ER96–2970–000]

Take notice that on September 12, 1996, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). This is one of eight initial rate filings and a petition for waiver of requirements under Orders No. 888 and 889 that Soyland made simultaneously to reflect the change in status to a Commission-regulated ''public utility'' from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service.

The filing consists of a Concept Agreement dated June 14, 1996 between Soyland and Southwestern Electric Cooperative, Inc. (Southwestern), pursuant to which Soyland makes available to Southwestern up to 15 MW of ''Participation Power'' until September 19, 1996. ''Participation Power'' means that Southwestern may schedule Soyland's capacity and energy available from Central Illinois Public Service Commission (CIPS), pursuant to the February 11, 1996 Power Supply and Transmission Services Agreements between Soyland and CIPS, to the extent that such capacity is available, or as otherwise agreed to by CIPS.

Copies of the filing were served upon Southwestern, CIPS, Illinois Power Company and the Illinois Commerce Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Soyland Power Cooperative, Inc.

[Docket No. ER96–2971–000]

Take notice that on September 12, 1996, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). This is one of eight initial rate filings and a petition for waiver of requirements under Orders No. 888 and 889 that Soyland made simultaneously to reflect its change in status to a Commission regulated ''public utility'' from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service.

The filing consists of a Interchange Agreement dated February 15, 1995, between Soyland and Wabash Valley Power Association, Inc. (Wabash), pursuant to which the parties may from time to time, engage in the following interchange services. Emergency Energy (Service Schedule A); Interchange Energy (Service Schedule B); Seasonal Power (Service Schedule C); Short-Term Power (Service Schedule D); Limited Term Power (Service Schedule E); Diversity Power (Service Schedule F); and Reserve Capacity and Back-up Energy (Service Schedule G). Soyland is not now engaged in any transaction under the Interchange Agreement and will not, in the future, engage in any

transactions in which it would sell or exchange power or energy.

Copies of the filing were served upon Wabash and the Illinois Commerce Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Soyland Power Cooperative, Inc.

[Docket No. ER96–2972–000]

Take notice that on September 12, 1996, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). This is one of eight initial rate filings and a petition for waiver of requirements under Orders No. 888 and 889 that Soyland made simultaneously to reflect its change in status to a Commission regulated ''public utility'' from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service.

The filing consists of a Power Supply Agreement dated February 11, 1996 between Soyland, Western Illinois Power Cooperative, Inc. (merged into Soyland in March, 1989), and Central Illinois Public Service Company (CIPS), pursuant to which the parties may purchase power and/or energy from one another. The Commission accepted the Agreement for filing as to CIPS in Docket No. ER86–327 on April 28, 1986. Soyland is not currently engaged in, and, will not, in the future, engage in, any sales or exchanges under this Agreement.

Copies of the filing were served upon CIPS, Illinois Power Company, and the Illinois Commerce Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Soyland Power Cooperative, Inc.

[Docket No. ER96–2973–000]

Take notice that on September 12, 1996, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). This is one of eight initial rate filings and a petition for waiver of requirements under Orders No. 888 and 889 that Soyland made simultaneously to reflect its change in status to a Commission-regulated ''public utility'' from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service.

The filing consists of a Power Coordination Agreement dated October 5, 1984 between Soyland, Western Illinois Power Cooperative, Inc. (merged into Soyland in March, 1989), and Illinois Power Company (Illinois Power) as amended on April 25, 1994, pursuant to which the parties may provide for the long-term purchase by Soyland from Illinois Power of 435 MW of capacity and energy under formulary rates priced on an ''as-if-owned'' basis, and for transmission by Illinois Power, and for pooling. The Commission accepted the Agreement for filing as to Illinois Power In Docket No. ER85–130–000 and the amendment was accepted as to Illinois Power in Docket No. ER95–803–000.

Copies of the filing were served upon the Illinois Power Company and the Illinois Commerce Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Soyland Power Cooperative, Inc.

[Docket No. ER96–2974–000]

Take notice that on September 12, 1996, Soyland Power Cooperative, Inc. (Soyland), tendered for filing initial rate schedules pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). This is the centerpiece of eight initial rate filings and a petition for waiver of requirements under Orders No. 888 and 889 that Soyland made simultaneously to reflect its change in status to a Commission-regulated ''public utility'' from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service.

The filing consists of Wholesale Power Agreements, dated generally between 1963 and 1976, between Soyland and its twenty-one rural electric distribution cooperative members (Members), pursuant to which the parties may purchase power and/or energy from one another.

The filing is being made today in anticipation of Soyland's exit from the RUS lending program and concomitant loss of its exemption from Federal Power Act regulation pursuant to *Salt River Project Agricultural Improvement and Power District* v. *FPC,* 391 F.2d 470, 474 (D.C. Cir.), *cert. denied,* 393 U.S. 857 (1968). Soyland is seeking waivers of certain Commission requirements as part of this and other filings.

Copies of the filing were served upon Adams Electrical Co-operative, Clay Electric Co-operative, Inc., Clinton County Electric Cooperative, Inc., Coles-Moultrie Electric Cooperative, Corn Belt Electric Cooperative, Inc. Eastern Illini Electric Cooperative, Edgar Electric Cooperative Association, Farmers Mutual Electric Company, Illinois Rural Electric Company, Illinois Valley Electric Cooperative, Inc. MJM Electric Cooperative, Inc., McDonough Power Cooperative, Menard Electric Cooperative, Monroe County Electric Co-operative, Inc., Rural Electric Convenience Cooperative Company, Shelby Electric Cooperative, Southwestern Electric Cooperative, Inc., Spoon River Electric Co-operative, Inc., Tri-County Electric Cooperative, Inc. Wayne-White Counties Electric Cooperative, Western Illinois Electrical Coop. (the 21 member cooperatives) and the Illinois Commerce Commission.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. West Texas Utilities Company

[Docket No. ER96–2975–000]

Take notice that on September 12, 1996, West Texas Utilities Company (WTU), submitted for filing nine unexecuted Service Agreements, each dated August 1, 1996, establishing Destec Energy, Inc. (Destec), WestPlains Energy-Colorado (WPE-Colorado), Vitol Gas & Electric L.L.C. (Vitol), Missouri Public Service (Missouri), WestPlains Energy-Kansas (WPE-Kansas), Acquila Energy Marketing (Acquila), Western Power Services, Inc. (Western), Coral Energy Resources, L.P. (Coral), and Calpine Power Services Company (Calpine) as customers under the terms of WTU's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

WTU requests an effective date of August 13, 1996 for the service agreements with Destec, Vitol, Missouri, WPE-Kansas, Acquila, Western, Coral, Calpine and WPE-Colorado and the revised Index. Accordingly, WTU seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WPE-Colorado, Destec, Vitol, Missouri, WPE-Kansas, Acquila, Western, Coral, Calpine and the Public Utility Commission of Texas.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. EL Paso Energy Marketing

[Docket No. ER96–2993–000]

On September 12, 1996, EL Paso Energy Marketing filed a notice of succession changing its name from Eastex Power Marketing, Inc.

Comment date: October 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Kansas City Power & Light Company

[Docket No. ES96–45–000]

Take notice that on September 12, 1996, Kansas City Power & Light

Company filed an application, under 204 of the Federal Power Act, seeking authorization to issue short-term debt, from time to time, in an aggregate principal amount of up to $750 million outstanding at any one time, during the period October 1, 1996 through September 30, 1998, with a final maturity date no later than September 30, 1999. This authorization would supersede the authority granted by the Commission in Docket No. ES96–22–000 (75 FERC ¶ 62,125 (1996)) to issue up to $300 million of short-term debt during the period July 1, 1996 through June 30, 1998, with final maturities not later than June 30, 1999.

Comment date: October 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Glacier Electric Cooperative

[Docket No. OA96–152–000]

Take notice that on August 8, 1996, Glacier Electric Cooperative, tendered for filing an application for small public utility waiver of the requirements of Parts 35 and 37.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. City of Dover, Delaware

[Docket No. OA96–228–000]

Take notice that on September 10, 1996, the City of Dover, Delaware 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 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Soyland Power Cooperative, Inc.

[Docket No. OA96–229–000]

Take notice that Soyland Power Cooperative, Inc. (Soyland), on September 12, 1996, tendered for filing a request for waiver of the Commission's Order No. 889 Open Access Same-Time Information System (OASIS) requirements and Standards of Conduct. The requested waivers would exempt Soyland from filing an open access transmission tariff and from developing its own OASIS and would waive the requirement that Soyland separate its wholesale merchant personnel from its transmission personnel. Soyland, a small public utility, requests these waivers because it owns no transmission facilities, because it is not a control area operator, and because full compliance with Order Nos. 888 and 889 would be unduly burdensome. Soyland also seeks waiver of the Commission's sixty-day prior notice filing requirement.

Comment date: October 15, 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. 96–24333 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1494–094]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

September 17, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared for an application filed by Grand River Dam Authority (GRDA) that requests authorization to grant a dredging permit to a private landowner (applicant) for the excavation of shoreline and lake bottom material from Grand Lake O' The Cherokees (Grand Lake) for a boat launch and channel. The applicant was granted approval by Order Approving Non-Project use of Project Lands, 68 FERC 62,094, issued July 27, 1994, to dredge an area 90 feet long, 90 feet wide, and 10 feet deep. The applicant's new proposal is to extend the excavation shoreward 310 feet, making the boat launch and channel excavation site approximately 400 feet long, 90 feet wide, and up to a maximum depth of 10 feet. Approximately 4,444 cubic yards of material from the lake bottom and shoreline will be excavated from the site. The excavation would occur on project lands in the Horse Creek area (north shore) of Grand Lake, in Delaware County, just north of the town of Bernice, Oklahoma.

The DEA finds that GRDA's proposed amendment is not a major federal action significantly affecting the quality of the human environment. The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Comments on the DEA must be filed with the Commission within 30 days from the date of this notice. Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please include the project number (1494–094) on any comments filed.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24259 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–690–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Mississippi River Crossing—Minnesota Project and Request for Comments on Environmental Issues

September 17, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an Environmental Assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Mississippi River Crossing—Minnesota Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Northern Natural Gas Company (Northern) wants to increase its pipeline system's reliability by looping a crossing of the Mississippi River in Dakota and Washington Counties, Minnesota. Northern seeks authority to construct and operate about 3.03 miles of new 30-inch-diameter pipeline. This pipeline would interconnect with Northern's existing system that is already looped on the north and south sides of the

[1] Northern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

river. The 3.03 miles of pipeline would include:

- 7,425 feet in Dakota County;
- 4,750 feet in an open cut crossing of the Mississippi River; and
- 3,825 feet in Washington County.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed loop would require about 48.6 acres of land. Following construction, about 36.7 acres would be maintained as permanent right-of-way. The remaining 11.9 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed loop and the environmental information provided by Northern. This preliminary list of issues may be changed based on your comments and our analysis.

- Three Federally listed endangered or threatened species may occur in the proposed project area.
- Northern plans to open cut the Mississippi River for 4,750 feet.
- The Mississippi River at the crossing location is designated as the Mississippi National River & Recreational Area.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to:

Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426;

- Reference Docket No. CP96–690–000;
- Send a copy of your letter to:

Ms. Dawn Deibert Neumann, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., NE., PR–11.2, Washington, DC 20426; and

- Mail your comments so that they will be received in Washington, DC on or before October 21, 1996.

If you wish to receive a copy of the EA, you should request one from Ms. Deibert Neumann at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to interevene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Dawn Deibert Neumann, EA Project Manager, at (202) 208–1046.

Lois D. Cashell,

Secretary.

[FR Doc. 96–24256 Filed 9–20–96; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of July 8 Through July 12, 1996

During the week of July 8 through July 12, 1996, 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: September 11, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 980

Appeals

Burlin McKinney, 7/9/96, VFA–0177

Burlin McKinney (McKinney) filed an Appeal from a denial by the Department of Energy's Office of the General Counsel (OGC) of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the document requested by McKinney, a memorandum prepared by the OGC advising the Assistant Secretary for Environment, Safety and Health, was an attorney-client, attorney work-product document exempt from disclosure under Exemption 5 of the FOIA. Therefore, the Appeal was denied.

William H. Payne, 7/10/96, VFA–0178

William H. Payne (Payne) filed an Appeal from a determination issued to him by the Albuquerque Operations Office (AO) of the Department of Energy (DOE). In his Appeal, Payne asserted that AO did not conduct an adequate search for records he had requested pursuant to the FOIA. The DOE determined that AO had conducted an adequate search for records and Payne's Appeal was denied.

Personnel Security Hearing

Idaho Operations Office, 7/11/96, VSO–0087

Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 CFR Part 710. After carefully considering the record of the proceeding in view of the standards set forth in Part 710, the Hearing Officer found that the individual's one-time use of marijuana was unintentional and therefore did not raise a significant security concern. The Hearing Officer found that the individual's explanation of the incident was credible, and therefore, that he did not falsify information when he provided this explanation at his personnel security interview. The Hearing Officer also found that although the individual had engaged in unusual conduct, he had taken steps to prevent this conduct from recurring. Accordingly, the Hearing Officer found that the individual's access authorization should be restored.

Request for Exception

Boyd Jolley Company, 7/12/96, VEE–0006

Boyd Jolley Company filed an Application for Exception from the requirement that it file the Energy Information Administration's form entitled ''Resellers' Monthly Petroleum Product Sales Report'' (Form EIA–782B). In considering this request, the DOE found that the firm did not meet the standards for exception relief, as it was not experiencing a serious hardship or gross inequity as a result of this reporting requirement. Accordingly, exception relief was denied.

Refund Applications

Anderson/The States, Et Al., Standard Oil (Indiana)/West Virginia, Belridge Oil Co./Rhode Island, Standard Oil (Indiana)/Rhode Island, Charter Co./Mississippi, 7/12/96, RQ14–11, et al.; RM251–296; RQ8–608; RQ251–609; RQ23–610

The DOE issued a Decision and Order disbursing all remaining second stage funds, totaling $15,491,367, to eligible state energy conservation offices. The funds are to be used to supplement other oil overcharge funds, including funds obtained from the Stripper Well Settlement Agreement, for various overcharge-related energy restitution and conservation programs. The funds can be used by both state governments and federally-recognized Indian Tribes. In addition, the Decision rescinds a portion of a previous second-stage refund granted to the State of Mississippi in the Charter special refund proceeding.

R.Y. Management, et al., 7/11/96, RG272–1001, et al.

The Office of Hearings and Appeals of the Department of Energy (DOE) issued a Decision and Order dismissing three Applications for Refund submitted in the crude oil overcharge refund proceeding conducted under 10 CFR Part 205, Subpart V. The claims were dismissed because they were filed after the deadline for submitting applications. As published in the Federal Register on April 21, 1995, all applications were to be postmarked by June 30, 1995.

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.

EASON OIL COMPANY/BRISCOE'S LP–GAS SERVICE, INC.	RF352–3	07/10/96
ATLANTIC RICHFIELD COMPANY	RF352–8	
HEINZ PET PRODUCTS ET AL	RF272–92540	07/12/96
JOHN TINNEY DELIVERY SERVICE ET AL	RF272–97708	07/10/96
MR. AND MRS. J.D. PIAR ET AL	RK272–03374	07/11/96
THE TIMKEN COMPANY	RR272–136	07/10/96
U.S. TURBINE CORP. ET AL	RG272–205	07/08/96

Dismissals

The following submissions were dismissed:

Name	Case No.
ACME RESIN CORPORATION	RD272–58053
COPOLYMER RUBBER & CHEMICAL CORPORATION	RD272–58418
DANIEL INTERNATIONAL CORPORATION	RK272–3400
DIGITAL EQUIPMENT	RD272–58469
LEWISVILLE SHELL	RF315–5908
NATIONAL–STANDARD	RD272–17314
OXFORD AUTO SALES, INC.	RF300–19946
REPUBLIC TAXI COMPANY	RD272–55465
SOUTHWEST OIL DISTRIBUTORS	RF304–15427
THORNTON OIL COMPANY	RF304–15061
TIPTON SHELL	RF315–988
TRUCKSTOPS CORP. OF AMERICA	RF304–14293

Name	Case No.
UNITED TRUCK & BUS SERVICE	RF300–21715
WASHINGTON PARISH	RF272–97762

[FR Doc. 96–24294 Filed 9–20–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of August 26 Through August 30, 1996

During the week of August 26 through August 30, 1996, 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: September 11, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 987

Appeal

Carolina Power & Light Co., 8/28/96, VEA–0005

Carolina Power & Light Co. filed an Appeal from a determination by the DOE's Office of Environmental Management of CP&L's assessment for the Uranium Enrichment Decontamination and Decommissioning Fund (D&D Fund). CP&L argued that its assessment should not include DOE enrichment services associated with (1) leased enriched uranium, (2) a waste stream purchased from a foreign utility, or (3) fabrication allowances. After considering CP&L's arguments, the DOE determined that the requested exclusions would be inconsistent with the statute establishing the D&D Fund and the implementing regulations. Accordingly, the Appeal was denied.

Refund Applications

Fairmont Foods, Inc., 8/29/96, RF272–92292

The DOE issued a Decision and Order concerning one Application for Refund filed by Fairmont Foods, Inc. In the Subpart V crude oil overcharge refund proceeding, the DOE determined that Fairmont Foods, Inc. was not entitled to a refund since it had filed a Reseller's Escrow Settlement Claim Form and Waiver. In that filing, Fairmont Foods, Inc. had requested a Stripper Well refund from the Reseller's escrow, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the DOE denied the Application for Refund.

Franklin Oil Corp., 8/29/96, RF272–98162

The Department of Energy (DOE) issued a Decision and Order denying an Application for Refund that was filed by Franklin Oil Corp. (Franklin) in the crude oil refund proceeding. In the Decision, the DOE concluded that Franklin was a refiner of petroleum products, and therefore was required to show that it was injured as a result of the alleged crude oil overcharges. Because Franklin failed to make such a showing, its application was denied.

H&D Excavating, Inc., 8/30/96, RC272–348

The DOE issued a Supplemental Order to H&D Excavating, Inc. rescinding a part of a Decision and Order that granted the application of 15 claimants in the Subpart V crude oil refund proceeding. See *Burnup & Sims, Inc.*, Case No. RF272–92013 (December 19, 1994). In that Decision, the DOE granted H&D Excavating, Inc. (Case No. RF272–92350), a refund of $88 based on its purchases of 110,050 gallons of refined petroleum products. The United States Post Office returned as undeliverable the refund check mailed to H&D Excavating, Inc. Since the DOE was also unable to contact or locate H&D Excavating, Inc., the DOE rescinded the refund approved for H&D Excavating, Inc.

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.

CLAIRMONT TRANSFER COMPANY	RC272–349	08/29/96
COMMERCIAL TRUCK CO., LTD	RF272–97307	08/26/96
GREENWOOD MOTOR LINES, INC. ET AL	RF272–75953	08/28/96
IES INDUSTRIES INC	RF272–98185	08/28/96
MERCER MOTOR FREIGHT, INC. ET AL	RF272–97332	08/28/96
NASHVILLE ELECTRIC SERVICE ET AL	RF272–99115	08/28/96
NORTHEAST PETROLEUM INDUSTRIES/HUCKINS OIL COMPANY, INC.	RR264–1	08/29/96

Dismissals

The following submissions were dismissed:

NAME	CASE NO.
ALMEIDA BUS LINES, INC.	RG272–0080
ASHCRAFT'S MARKETS, INC.	RF272–97807
BAKER AVIATION, INC.	RF272–98023
BARKER TIMBER COMPANY	RF272–95155
CHRYSLER TRANSPORT	RF272–97934
COCA-COLA BOTTLING CO	RF272–90191
DOLE FRESH VEGETABLES, INC	RF272–95152
ESTATE OF R.E. WILLIAMS	RF272–97906

NAME	CASE NO.
MCNAMARA MOTOR EXPRESS, INC	RF272–97068
QUALITY SEAFOODS, INC.	RF272–95157
STATE COMPENSATION INSURANCE FUND	RF272–92741
STATE OF VERMONT	RF272–97901

[FR Doc. 96–24295 Filed 9–20–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders Week of July 31 Through August 4, 1995

During the week of July 31 through August 4, 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: September 10, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 931

Appeal

Esther Lyons, 8/3/95, VFA–0056

Esther Lyons (Lyons) filed an Appeal from a determination issued to her by the Oak Ridge Operations Office (Oak Ridge) of the Department of Energy (DOE). In her Appeal, Lyons asserted that Oak Ridge failed to perform an adequate search for responsive documents in its possession regarding a Freedom of Information Act (FOIA) Request she submitted. In her Request, Lyons requested copies of all documents containing information pertaining to her father, Michael D. Lyons. In its determination letter, the Oak Ridge stated that it could not find any documents which were responsive to her Request. In her Appeal, Lyons argued that Oak Ridge conducted an inadequate search for responsive documents and asserted that responsive documents must exist since her father operated various companies which did business with the Atomic Energy Commission. The DOE determined that Oak Ridge conducted an adequate search for responsive documents in light of the fact that the Lyons' Request only contained her father's name and none of the information provided in her subsequent Appeal. However, Oak Ridge agreed to conduct another search for responsive documents using the additional information provided in Lyons' Appeal. Consequently, the DOE remanded the matter to Oak Ridge so that it could conduct a further search for responsive documents.

Personnel Security Hearing

Albuquerque Operations Office, 8/3/95, VSO–0028

An Office of Hearings and Appeals Hearing Officer issued an opinion against restoring the security clearance of an individual whose clearance had been suspended because the Department had obtained derogatory information that fell within 10 CFR 710.8 (k) and (l). In reaching his conclusion, the Hearing Officer found that the individual had possessed and used marijuana after signing a certification that he would not use illegal drugs. In addition, the Hearing Officer found that current inconsistencies in the individual's testimony support the charge that the individual is not being honest, reliable and trustworthy within the meaning of 10 CFR 710.8(l).

Supplemental Order

THE 341 TRACT UNIT OF THE CITRONELLE FIELD, 8/1/95, VFX–0003

The DOE issued a Decision and Order directing payment to a mediator for his services in connection with negotiations to settle litigation over the escrow funds concerning The 341 Tract Unit of the Citronelle Field. The DOE directed that $12,063.25 of the mediator's fee should be taken from the Citronelle escrow account. The remaining $4,461.75 of his fee is to be paid directly by the DOE.

Refund Applications

CITRONELLE-MOBILE GATHERING/GLOBE MANUFACTURING CO., ET AL., 8/3/95, RR336–75, ET AL.

The DOE issued a Decision and Order directing payment of refunds to 37 applicants in the Citronelle-Mobile Gathering (Citronelle) special refund proceeding. These funds had been collected from Citronelle pursuant to a March 17, 1988, a decision of the United States District Court for the Southern District of Alabama. On August 12, 1992, the court ordered the transfer of the Citronelle overcharges funds from the registry of the court to the DOE deposit escrow fund account, and ordered the transfer of any additional payments into the registry to the DOE escrow account on a quaterly basis. The court directed the DOE Office of Hearings and Appeals (OHA) to make payments to the claimants, in proportion to the number of gallons of eligible refined petroleum products purchased by each claimant, whenever the amount in the DOE escrow account exceeds $1,000,000, and no less often than once every two years. Two years had passed since the most recent disbursement of funds on August 3, 1993. Accordingly, the DOE directed that the funds in the Citronelle account be disbursed to the 37 eligible claimants.

NATIONAL HELIUM CORP./OREGON RM3–289;TIME OIL COMPANY/OREGON RM334–290; COLINE GASOLINE CORP./OREGON RM2–291; BELRIDGE OIL COMPANY/OREGON RM8–292; PERRY GAS PROCESSORS/OREGON RM183–293; PALO PINTO OIL AND GAS/OREGON, 7/31/95, RM5–294

The DOE issued a Decision and Order granting a Motion for Modification filed by the State of Oregon in the National Helium Corp., Time Oil Company, Coline Gasoline Corp., Belridge Oil Company, Perry Gas Processors, and Palo Pinto Oil and Gas special refund proceedings. Oregon requested permission to modify its second-stage refund plan after the telecommuting program approved in *National Helium/Oregon*, 25 DOE ¶ 85,017 (1995) failed to win approval from the Oregon state legislature. Oregon wished to reallocate the $500,000 previously intended for that program to its Public Buildings Energy Savings Program, which was approved in the same decision. The DOE determined that increased funding would extend the benefits of the Public

Buildings Energy Savings Program to a larger number of communities without upsetting the balance of Oregon's overall restitutionary program. Accordingly, Oregon's Motion for Modification was granted.

Texaco Inc. Vaughan Bassett Furniture Corp., 8/2/95, RF321–15350

The DOE issued a Decision and Order granting an Application for Refund filed by the Vaughan Bassett Furniture Corp. (Bassett) in the Texaco Inc. Subpart V special refund proceeding. In its refund application, Bassett sought an above-volumetric refund based upon its claim that it incurred a disproportionate overcharge during the Texaco consent order period. In support of its claim to an above-voluetric refund Bassett submitted documents prepared by the DOE's Economic Regulatory Administration (ERA) based upon an ERA audit of Texaco's business records.

The DOE found that the enforcement documents submitted by Bassett, and the Remedial Order issued to Texaco by DOE as a result of the ERA audit, support Bassett's claim to an above-volumetric refund. The overcharge amount established by the enforcement documentation (plus pre-judgment interest) was reduced by 57.5 percent of its total to reflect the nature of the DOE/Texaco settlement agreement. As an end-user of Texaco refined product, Bassett was not required to submit detailed evidence of injury in order to receive a refund. Bassett was awarded a refund of $39,100 plus accrued 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.

CITY OF NORTH AUGUSTA, SOUTH CAROLINA ET AL	RF272–95460	07/31/95
COLONIAL SCHOOL DISTRICT ET AL	RK272–75	08/02/95
CONTISHIPPING DIVISION OF CONTINENTAL GRAIN	RR272–126	08/02/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–36	07/31/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–31	08/02/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–34	08/02/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–17	08/03/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–30	08/03/95
GOLD LINE, INC. ET AL	RF272–77478	08/02/95
LAKE COUNTY SCHOOL DISTRICT	RF272–95908	08/02/95
HARTFORD SCHOOL DISTRICT	RF272–95951	
MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT ET AL	RF272–95483	08/02/95
NEPERA, INC.	RR272–129	08/02/95
PETER FISHER & SON, INC. ET AL	RK272–11	08/02/95
TEXACO INC./BEAL'S TEXACO ET AL	RF321–11266	08/03/95
TEXACO INC./ILAN PETROLEUM COMPANY	RF321–20558	08/02/95
INGLEWOOD OIL COMPANY	RF321–20559	
TEXACO INC./MARITIME OIL COMPANY	RF321–20445	08/02/95
TEXACO INC./WILLIAM KRONENBERG TEXACO	RF321–20467	08/02/95

Dismissals

The following submissions were dismissed:

Name	Case No.
BARBER COUNTY, KANSAS	RF272–89047
CARL COLTERYAHN DAIRY	RF272–97317
CITY OF MITCHELL	RF272–86647
FARMERS CO–OP ASSOCIATIONS	RG272–172
SOUTHWESTERN STATE HOSPITAL	RF272–86653

[FR Doc. 96–24297 Filed 9–20–96; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5614–4]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with The Bionetics Corporation to provide assistance in the enforcement of regulatory requirements under the Clean Air Act until April 30, 2001. Bionetics has been authorized access to information submitted to the Agency under Clean Air Act sections 114, 203, 208, 211, 307(a), and 609. Some of the information may be claimed or determined to be confidential business information.

DATES: This notice is effective September 23, 1996.

FOR FURTHER INFORMATION CONTACT: John C. Connell, Environmental Protection Specialist, USEPA, 12345 West Alameda Parkway, Suite 214, Lakewood, Colorado 80228. Telephone: (303) 969–6479. Fax: (303) 969–6490. Internet mail address: connell.johnc@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has authorized access for the Bionetics Corporation (''Bionetics''), a contractor, to information submitted to the EPA under sections 114, 203, 208, 211, 307(a), and 609 of the Clean Air Act (''the Act''). Some of this information may be claimed or determined to be confidential business information (''CBI''). The Bionetics contract number is 68–W6–0027, and the Bionetics address is Tenth Floor, Suite 1000, Harbour Centre Building, 2 Eaton Street, Hampton, Virginia 23669.

Bionetics provides enforcement support to the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance (the ''Air Enforcement Division'') in a number of activities related to the Act. The activities in which Bionetics provides enforcement support include:

Inspections of fuel and fuel additive dispensing facilities;

Inspections of fuel and fuel additive refining, importing and distribution facilities;

Motor vehicle tampering and urban bus retrofit inspections;

Motor vehicle air conditioning repair inspections;

Audits of fuel refiners, importers, and oxygenate blenders;

Detergent rule audits;

Laboratory analysis of fuel and fuel additive samples;

Litigation support; and

Audits of aftermarket catalytic converter warranty cards.

The types of information that may be disclosed include records related to the production, importation, distribution, sale, storage, testing and transportation of gasoline, gasoline blendstocks, diesel fuel, diesel fuel blendstocks, and detergent additives; and records related to the manufacture, importation, certification, testing, emission control warranty, repair, modification and fueling of motor vehicles and motor vehicle engines.

It is necessary for Bionetics to have access to these records in order to evaluate whether regulated parties are in compliance with the regulatory requirements, described above, and to prepare reports to the Air Enforcement Division on their conclusions.

Bionetics may be assisted in these activities by a subcontractor, Patterson and Associates of Houston, Texas, subcontract number 523–001.

In accordance with 40 CFR 2.301(h)(2), EPA has determined that disclosure of confidential business information to Bionetics and its subcontractor is necessary for these entities to carry out the work required by this contract. EPA is issuing this notice to inform all submitters of information to the Air Enforcement Division under sections 114, 203, 208, 211 and 307(a) of the Act that the Agency may provide access to CBI contained in such submittals to Bionetics and their subcontractor as necessary to carry out work under this contract. Disclosure of CBI under this contract may continue until April 30, 2001.

As required by 40 CFR 2.301(h)(2), the Bionetics contract includes provisions to assure the appropriate treatment of CBI disclosed to contractors and subcontractors.

Dated: September 16, 1996.

Sylvia K. Lowrance,

Acting Assistant Administrator for Enforcement and Compliance Assurance.

[FR Doc. 96–24288 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5613–9]

Region 10; Notice of Issuance of OCS Permit to BP Exploration (Alaska) Incorporated Beaufort Sea, Alaska

Notice is hereby given that on September , 1996, the Environmental Protection Agency issued an outer continental shelf (OCS) permit to BP Exploration (Alaska) Incorporated to conduct exploratory oil well drilling in the Beaufort Sea, Alaska.

The OCS permit has been issued under the outer continental shelf (40 CFR Part 55) regulations, subject to certain conditions specified in the permit. The final permit decision shall become effective 30 days after (date of this notice) unless review is requested under 40 CFR § 124.19. Petition for review of this final OCS permit decision must be filed on or before October 23, 1996 in accordance with 40 CFR § 124.19.

Copies of the OCS permit and administrative record are available for public inspection upon request at the following location: Environmental Protection Agency, Region 10, 1200 Sixth Avenue, M/S OAQ–107, Seattle, Washington 98101.

Dated: September 6, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–24286 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL 5614–5]

Agency Information Collection Activities; Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et, seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 0976.08; The 1997 Hazardous Waste Report; was approved 09/03/96; OMB No. 2050–0024; expires 09/30/99.

EPA ICR No. 0983.05; NSPS for Standard of Performance for Petroleum Refineries—Subpart GGG; was approved 08/05/96; OMB No. 2060–0067; expires 08/31/99.

EPA ICR No. 0998.05; NSPS for SOCMI Air Oxidation and Distillation—Subpart III and NNN; was approved 08/13/96; OMB No. 2060–0197; expires 08/31/99.

EPA ICR No. 1167.05; NSPS for Lime Manufacturing—Subpart HH; was approved 08/14/96; OMB No. 2060–0063; expires 08/31/99.

EPA ICR No. 1084.05; Amendments to NSPS for Nonmetallic Mineral Processing Plants; was approved 09/03/96; OMB No. 2060–0050; expires 09/30/99.

EPA ICR No. 1088.08; NSPS for Steam Generating Unit, Sulfur Dioxide, Nitrogen Oxide, Particulate Matter; was approved 08/19/96; OMB No. 2060–0072; expires 08/31/99.

EPA ICR No. 1778.01; Authorization of Indian Tribe Hazardous Waste Programs under RCRA Subtitle C; was approved 08/30/96; OMB No. 2050–0155; expires 08/31/99.

EPA ICR No. 1745.02; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements—40 CFR Part 257; was approved 09/12/96; OMB No. 2050–0154; expires 09/30/99.

EPA ICR No. 1139.05; TSCA Section 4 Test Rules, Consent Orders and Test Rule Exemptions; was approved 09/06/96; OMB No. 2070–0033; expires 09/30/99.

EPA ICR No. 0938.06; General Administrative Requirements for Assistance Programs; was approved 09/12/96; OMB No. 2030–0020; expires 09/30/99.

EPA ICR No. 1774.01; Information Collection Activities Associated with EPA's Mobile Air Conditioner Retrofitting Program; was approved 09/12/96; OMB No. 2060–0350; expires 09/30/99.

EPA ICR No. 1053.05; NSPS for Electric Utility Steam Generating Units (Subpart Da); was approved 09/12/96; OMB No. 2060–0023; expires 09/30/96.

EPA ICR No. 1432.16; Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment, and

Feedstock Use of Ozone-Depleting Substances; was approved 09/12/96; OMB No. 2060–0170; expires 09/30/99.

OMB Disapprovals

EPA ICR No. 1361.05; New and Amended RCRA Reporting and Recordkeeping Requirements for Boilers and Industrial Furnaces Burning Hazardous Waste; was disapproved by OMB 08/20/96.

EPA ICR No. 1777.01; Pesticides and Ground Water State Management Plan (SMP) Rule; was disapproved by OMB 08/23/96.

EPA ICR No. 1784.01; Addition of Facilities in Certain Industry Sectors, Toxic Chemical Release Reporting, Community Right-to-Know; was disapproved by OMB 08/26/96.

EPA ICR No. 1626.06; National Emissions Reduction Program, Amendment; was disapproved by OMB 08/30/96.

EPA ICR No. 1775.01; Hazardous Waste Identification Rule for Contaminated Media; was disapproved by OMB 09/12/96.

Dated: September 17, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–24287 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5613–6]

Elizabethtown Landfill De Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: United States Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of 5 *de minimis* parties for response costs incurred by the United States Environmental Protection Agency at the Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania.

DATES: Comments must be provided on or before October 23, 1996.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania, U.S. EPA Docket No. III–96–10–DC.

FOR FURTHER INFORMATION CONTACT: Charles B. Howland, Senior Assistant Regional Counsel, (215) 566–2645, United States Environmental Protection Agency, Office of Regional Counsel, (3RC23), 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

SUPPLEMENTARY INFORMATION:

Notice of De Minimis Settlement

In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Elizabethtown Landfill Superfund Site in West Donegal Township, Lancaster County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on June 27, 1996 and subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee. Below are listed the parties who have executed binding certifications of their consent to participate in the settlement: Armstrong World Industries, Inc., P. Clayman & Sons, Inc. (t/a P. Clayman & Sons of Pennsylvania, Inc.), United Selling Corporation, United Piece Dye Works, L.P., Chargeurs Inc.

These 5 parties collectively agreed to pay $221,977 to the United States Environmental Protection Agency subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, Section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with potentially responsible parties at the Elizabethtown Landfill Superfund Site who are responsible for less than .39 percent of the volume of identified hazardous substances at the Site.

The *de minimis* parties listed above will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs at the Elizabethtown Landfill Superfund Site.

The Environmental Protection Agency will receive written comments to this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC23), 841 Chestnut Building, Philadelphia Pennsylvania, 19107 by contacting Charles B. Howland, Senior Assistant Regional Counsel, at (215) 566–2645.

W.T. Wisniewski,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 96–24281 Filed 9–20–96; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the October 10, 1996 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Tuesday, October 22, 1996 at 9:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: September 18, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–24465 Filed 9–19–96; 2:10 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

September 16, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0710.

Expiration Date: 02/28/97.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—CC Docket No. 96–98, First Report and Order.

Form No.: N/A.

Estimated Annual Burden: 1,575,220 total annual hours; 128.5 hours per respondent (avg.); 12,250 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $937,000.

Description: In the First Report and Order issued in CC Docket No. 96–98 the Commission adopted rules and regulations to implement parts of Section 251 and 252 that effect local competition. Specifically, the Order requires incumbent local exchange carriers (''LECs'') to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for retail services to new entrants; that incumbent LECs price such services at rates that are cost-based and just and reasonable; and that they provide access to rights-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

OMB Control No.: 3060–0099.

Expiration Date: 08/31/99.

Title: Annual Report—FCC Form M.

Form No.: FCC M.

Estimated Annual Burden: 3,360 total annual hours; 1,120 hour per respondent (avg.); 3 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: FCC Form M is the Annual Report of financial and operating information from all subject telephone companies having annual operating revenues in excess of $100 million. It is needed to provide the Commission with the data required to fulfill its regulatory responsibilities.

OMB Control No.: 3060–0731.

Expiration Date: 09/30/99.

Title: Telecommunications Relay Services (TRS), CC Docket No. 90–571, MO&O (Coin Sent-Paid Order).

Form No.: N/A.

Estimated Annual Burden: 7980 total annual hours; 2.6 hours per respondent (avg.); 3060 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: In the Memorandum and Opinion and Order issued in CC Docket No. 90–571, the Commission suspended enforcement of coin sent-paid requirement until August 26, 1997. The Commission requires that payphones be made accessible to TRS users during the suspension pursuant to the alternative plan. The Commission also requires, among other things, that Petitioners work with any other interested parties that wish to participate to prepare and file a joint status report with the Commission on August 26, 1996 and February 26, 1997. The status reports will help the Commission monitor technical developments, assess the effectiveness of the alternative plan in meeting the needs of TRS users, and determine the appropriate action to take regarding TRS coin sent-paid service.

OMB Control No.: 3060–0666.

Expiration Date: 09/30/98.

Title: Consumer Information, Branding by Operator Service Providers—Section 64.703(a)

Form No.: N/A.

Estimated Annual Burden: 666,666 total annual hours; 1529 hours per respondent (avg.); 436 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $150,000.

Description: As required by 47 U.S.C. Section 226(b)(1), 47 CFR Section 64.703(a) provides that operator service providers disclose to consumers at the outset of operator assisted calls their identity, and, upon request, rates for the call, collection methods, and complaint procedures. In CC Docket No. 94–158, the Commission modified the term consumer thereby requiring that service providers disclose their identities to both parties, rather than one party to a collect call.

OMB Control No.: 3060–0717.

Expiration Date: 05/31/98.

Title: Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77.

Form No.: N/A.

Estimated Annual Burden: 551 total annual hours; 2.6 hours per respondent (avg.); 210 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: OMB approved the proposed requirements contained in the Second Further Notice of Proposed Rulemaking (Notice) issued in CC Docket No. 92–77, Billed Party Preference for 0+ InterLATA Calls. In the Notice, the Commission sought comment on tentative conclusions, among other things, that it should: (1) establish benchmarks for the rates that consumers are asked to pay for operator service calls reflecting what consumers expect to pay for those calls; and (2) require that, if consumers will be charged rates above the benchmarks, the operator service provider (OSP) offering services through payphones and other aggregator locations disclose the applicable charges for the call to the consumer orally before connecting the call.

OMB Control Number: 3060–0715.

Expiration Date: 08/31/99.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information—CC Docket No. 96–115.

Description: OMB approved the proposals contained in the Notice of Proposed Rulemaking (NPRM) issued in CC Docket No. 96–116. The NPRM sought to clarify and specify in more detail the obligations of telecommunications carriers under the customer proprietary network information (CPNI) and subscriber list information provisions of the Telecommunications Act of 1996 (see 47 U.S.C. Section 222). The NPRM also sought to implement data safeguards for information about calls received by alarm monitoring services, pursuant to 47 U.S.C. Section 275(d).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–24216 Filed 9–20–96; 8:45 am]

BILLING CODE 6712–01–P

[Report No. 2154]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 18, 1996.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street,

NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed [insert date of 15 days after Publication in Federal Register]. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation. (ET Docket 93–62)

Number of Petitions Filed: 17

Subject: Revision of the Commission's Rules to Ensure compatibility with Enhanced 911 Emergency Calling Systems. (CC Docket No. 94–102)

Number of Petitions Filed: 16

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Moncks Corner, Kiawah Island and Sampit, SC) (MM Docket No. 94–70, RM–8474, RM–8706)

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–24215 Filed 9–20–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1134–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for North Carolina (FEMA–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 6, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from Hurricane Fran beginning on September 5, 1996, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of North Carolina.

You are authorized to coordinate all Federal disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the disaster on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title IV of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, Federal resources necessary to alleviate the impacts of the disaster. Therefore, you are authorized to provide direct Federal assistance for the first 72 hours at 100 percent Federal funding for eligible costs. You or your designee may extend the time period for this direct Federal assistance funding, if necessary.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal assistance and administrative expenses.

You are further authorized to provide Disaster Housing assistance under the Individual Assistance program in the designated areas. Other assistance under Individual Assistance, and/or the Public Assistance and Hazard Mitigation Grant programs may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs, except as noted in the paragraph above.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lacey Suiter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina have been affected adversely by this declared major disaster:

The counties of Bladen, Brunswick, Columbus, Cumberland, Duplin, New Hanover, Onslow, Pender, Robeson, and Sampson for Disaster Housing under the Individual Assistance program and Direct Federal Assistance for the first 72 hours following declaration at 100 percent Federal Funding for eligible costs.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–24305 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1134–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

The counties of Alamance, Beaufort, Guilford, Halifax, Hoke, Johnston, Moore, Richmond, Rutherford and Wayne for Public Assistance (already designated for Direct Federal Assistance, Individual Assistance and Hazard Mitigation.)

The counties of Caswell, Montgomery, Northampton, Pitt and Scotland for Public Assistance and Hazard Mitigation (already designated for Direct Federal Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–24306 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1136–DR]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–1136–DR), dated September 11, 1996, and related determinations.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 11, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico, resulting from Hurricane Hortense beginning on September 9, 1996, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance and Hazard Mitigation Assistance may be designated at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. At your discretion, for the first 72 hours, you are authorized to fund direct Federal assistance at 100 percent of the total eligible costs, if warranted. You or your designee may extend the time period for this direct Federal assistance funding, if necessary.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jose Bravo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Puerto Rico to have been affected adversely by this declared major disaster:

Municipalities of Guayama, Loiza, Ponce, and Toa Baja for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–24311 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1136–DR]

Puerto Rico; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico, (FEMA–1136–DR), dated September 11, 1996, and related determinations.

EFFECTIVE DATE: September 14, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Puerto Rico, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 11, 1996:

The municipalities of Aibonito, Cidra, Comerio, Dorado, Vega Alta and Las Marias for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–24312 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1136–DR]

Puerto Rico; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico, (FEMA–1136–DR), dated September 11, 1996, and related determinations.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Puerto Rico, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of :

The municipalities of Arroyo, Bayamon, Canovanas, Carolina, Cayey, Ceiba, Guaynabo, Gurabo, Las Piedras, Maunabo, Rio Grande, Salinas, San Juan, San Lorenzo, Santa Isabel and Yabucoa for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Catherine H. Light,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–24313 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 6, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in the Commonwealth of Virginia, resulting from Hurricane Fran and associated severe storm conditions including high winds, tornadoes, wind-driven rain, and river and flash flooding beginning on September 5, 1996, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

You are authorized to coordinate all Federal disaster relief efforts which have the

purpose of alleviating the hardship and suffering caused by the disaster on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title IV of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, Federal resources necessary to alleviate the impacts of the disaster. Therefore, you are authorized to provide direct Federal assistance for the first 72 hours at 100 percent Federal funding for eligible costs. You or your designee may extend the time period for this direct Federal assistance funding, if necessary.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Individual Assistance, Public Assistance and the Hazard Mitigation Grant programs may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs, except as noted in the paragraph above.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

The entire Commonwealth for Direct Federal Assistance for the first 72 hours following declaration at 100 percent Federal funding for eligible costs.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–24307 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

The independent city of Lynchburg and the counties of Brunswick and Greenville for Public Assistance and Hazard Mitigation Assistance (already designated for Direct Federal Assistance.)

The county of Page for Public Assistance and Hazard Mitigation (already designated for Individual Assistance, and Direct Federal Assistance.)

The counties of Mecklenburg and Nelson and the independent city of Staunton for Public Assistance (already designated for Individual Assistance, Hazard Mitigation and Direct Federal Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–24308 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

The independent cities of Bedford and Lexington and the counties of Appomattox, Charles City, Charlotte, Culpeper, Louisa, Lunenburg, Powhattan and Stafford for Public Assistance and Hazard Mitigation (already designated for Direct Federal Assistance.)

Highland County for Individual Assistance, Public Assistance and Hazard Mitigation (already designated for Direct Federal Assistance.)

The counties of Halifax and Rappahannock for Public Assistance (already designated for Individual Assistance, Hazard Mitigation and Direct Federal Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Catherine H. Light,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–24309 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, is hereby amended to include Public Assistance and Hazard Mitigation in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

The counties of Clarke, Nelson and Rockbridge, and the Independent City of Martinsville for Individual Assistance and Hazard Mitigation (already designated for Direct Federal Assistance.)

The counties of Augusta, Madison, Pittsylvania and Rockingham, and the Independent Cities of Danville, Harrisonburg and Waynesboro for Public Assistance and Hazard Mitigation (already designated for Individual Assistance and Direct Federal Assistance.)

The counties of Halifax, Mecklenburg, Rappahannock, Shenandoah and Warren, and the Independent City of Staunton for

Hazard Mitigation (already designated for Individual Assistance and Direct Federal Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–24310 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1137–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1137–DR), dated September 11, 1996, and related determinations.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 11, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from Hurricane Fran and associated heavy rain, high wind, flooding and slides on September 5–8, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint John McKay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

Berkeley, Grant, Hardy, Hampshire, Mineral, Morgan and Pendleton Counties for Individual Assistance, Public Assistance and Hazard Mitigation.

Jefferson County for Individual Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–24314 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1137–DR]

West Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia, (FEMA–1137–DR), dated September 11, 1996, and related determinations.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of West Virginia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 11, 1996:

Tucker County for Individual Assistance, Public Assistance and Hazard Mitigation.

Randolph County for Individual Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–24315 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–02–P

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the Emergency Management Institute.

Dates of Meeting: October 28–29, 1996.

Place: Federal Emergency Management Agency National Emergency Training Center Emergency Management Institute Conference Room, Building N, Room 408 Emmitsburg, Maryland 21727.

Time: Monday, October 28, 1996, 8:30 a.m.–5:00 p.m. Tuesday, October 29, 1996, 8:30 a.m.–12:00 noon.

Proposed Agenda: Work on the Board's 1996 Annual Report, the Board's Workplan for 1997, and status briefings on EMI's programs.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1286.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 15, 1996.

Kay C. Goss,

Associate Director, Preparedness, Training, and Exercises Directorate.

[FR Doc. 96–24322 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–01–P

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: October 10–12, 1996.

Place: Building G Conference Room, National Emergency Training Center, Emmitsburg, Maryland.

Time:

October 10, 1996, 8:30 a.m.–5:00 p.m.
October 11, 1996, 8:30 a.m.–9:00 p.m.
October 12, 1996, 8:30 a.m.–5:00 p.m.

Proposed Agenda: October 10–12: Prepare the 1996 Annual Report and Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before October 1, 1996.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 11, 1996.

Carrye B. Brown,

U.S. Fire Administrator.

[FR Doc. 96–24321 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–01–P–M

Privacy Act of 1974; Proposed Amended Routine Use; Disaster Recovery Assistance Files

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed amended routine use.

SUMMARY: The Federal Emergency Management Agency gives notice of a proposed amended routine use to be added to an existing system of records entitled, FEMA/REG–2, Disaster Recovery Assistance Files.

DATES: We invite comments on this proposed amended routine use. Please submit written comments by October 23, 1996. The proposed amended routine use and other modifications to this system, as stated, shall become effective 45 days from the date of this publication, without further notice, unless comments necessitate otherwise.

ADDRESSES: Please address comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472. Comments received will be available for public inspection at the address above from 9 a.m. to 4 p.m., Monday through Friday (except legal holidays).

FOR FURTHER INFORMATION CONTACT: Sandra Jackson, FOIA/Privacy Specialist, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3840.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) published notices of systems of records on January 5, 1987, 52 FR 324; February 3, 1987, 52 FR 3344; March 5, 1987, 52 FR 6875, and September 7, 1990, 55 FR 37182.

By this notice we amend a routine use to permit disclosure of a record from the Disaster Recovery Assistance Files to agencies or organizations that are responsible for administering or obtaining information relevant to the implementation of floodplain management and other hazard mitigation programs. The agencies or organizations include Federal, State, and local government agencies, and volunteer organizations. The programs include property acquisition, relocation programs, elevation programs, or any other hazard mitigation activities.

Since the 1993 Midwest Flooding, there has been a substantial increase in the number of requests to FEMA for information on applicants for disaster recovery; such information is covered by the Privacy Act. Almost all requests are from State and local agencies to evaluate disaster damages and their impacts on communities, and to implement floodplain management ordinances and hazard mitigation measures. There is no clear routine use to release Privacy Act information for these purposes. Each request requires review and analysis on a case-by-case basis by the Office of the General Counsel and by the Human Services Division of the Response & Recovery Directorate.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act), encourages floodplain management and other hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations. Section 404, Hazard Mitigation, of the Stafford Act authorizes funding for such projects.

The proposed amended routine use would enhance timely and efficient delivery of FEMA's all-hazards management because obtaining applicant assistance information, crucial to the implementation of floodplain management ordinances and hazard mitigation projects will be more easily obtainable than now by those entrusted with those responsibilities.

In addition, minor modifications are being made to this system to change the name of the Disaster Relief Act to the Robert T. Stafford Disaster Relief and Emergency Assistance Act; the System Location to the FEMA National Processing Service Centers under the purview of FEMA regional offices listed in Appendix AA; and to update the mailing addresses of FEMA Regional Offices listed in Appendix AA.

Accordingly, we revise FEMA/REG–2, Appendix A, and Appendix AA of the FEMA Privacy Act systems of records to read as follows:

FEMA/REG–2

SYSTEM NAME:

Disaster Recovery Assistance Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

FEMA National Processing Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for disaster recovery assistance following Presidentially declared major disasters or emergencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Records of registration for assistance (FEMA Form 90–69, Disaster Assistance Registration/Application includes names, addresses, telephone numbers, social security numbers, insurance coverage information, household size and composition, type of damage incurred, income information, programs to which referred for assistance, flood zones, and preliminary determinations of eligibility for disaster assistance).

b. Inspection reports (FEMA Form 90–56, Inspection Report) contain identification information, and results of survey of damaged property and goods.

c. Temporary housing assistance eligibility determinations (FEMA Forms 90–11 through 90–13, 90–16, 90–22, 90–24 through 90–28, 90–31, 90–33, 90–41, 90–48, 90–57, 90–68 through 90–70, 90–71, 90–75 through 90–78, 90–82, 90–86, 90–87, 90–94 through 90–97, 90–99, and 90–101). These determinations pertain to approval and disapproval of temporary housing assistance: General correspondence, complaints, appeals, and resolutions, requests for disbursement of payments, inquiries from tenants and landlords, general administrative and fiscal information,

payment schedules and forms, termination notices, and information shared with the temporary housing program staff from other agencies to prevent duplication of benefits, leases, contracts, specifications for repair of disaster damaged residences, reasons for eviction or denial of aid, sales information after tenant purchase of housing units, and status of disposition of applications of housing.

d. Eligibility decisions from other agencies (for example, the disaster loan program administered by the Small Business Administration, and decisions of the State-administered Individual and Family Grant program) as they relate to determinations of eligibility for disaster assistance programs.

e. State files containing related, but independently kept, records of persons who request Individual and Family Grants, and administrative files and reports required by FEMA. As to individuals, the same type of information as described above under registration, inspection, and temporary housing assistance records are kept. As to administrative and reporting requirements, FEMA Forms 76–27, 76–28, 76–30, 76–32, 76–34, 76–35, 76–38 are used. State administrative planning formats are also used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of l978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329, 5 U.S.C. App.1.

PURPOSE(S):

To register applicants needing disaster assistance, to inspect damaged homes, to verify information provided by the applicant, and to make eligibility determinations for that assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Other Federal agencies, State governments, local governments, and volunteer agencies charged with administering disaster relief programs, both under the Stafford Act and other disaster legislation of charters may have read-only access to information relevant to their particular assistance program to determine eligibility for assistance programs. They will not be able to change FEMA records. To the extent that eligibility for a program depends on eligibility for assistance from another program (section 312 of the Act prohibits duplication of benefits among disaster organizations), the information must be shared between and among these agencies and organizations.

For Property Acquisition and Relocation, a record from this system of records may be disclosed, in response to a written request, to Federal, State, or local government agencies, or to volunteer or private organizations charged with administering or obtaining information relevant to decisions concerning the implementation of floodplain management and other hazard mitigation measures, including property acquisition, relocation programs, elevation of buildings, and enforcement of floodplain management ordinances.

Additional routine uses may include those identified at Nos. 1, 2, 3, 5, 6, and 8 of Appendix A.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(l2): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Debt Collection Act of 1982, 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer discs, records in file folders.

RETRIEVABILITY:

By name, address, social security number, case file numbers.

SAFEGUARDS:

Hardware and software computer security measures; paper files in locked file cabinets or rooms; buildings are secured during non-business hours by building guards.

RETENTION AND DISPOSAL:

We have broken down the paragraphs under the categories of records section for easy reference. Records covered by paragraphs a.–d. are covered by FEMA Records Schedule N1–311–86–1, Item 8b(l) and are destroyed 6 years and 3 months after the files are consolidated. Records covered by paragraph e. are covered by FEMA Records Schedule N1–311–86–1, Item 7 and are destroyed 3 years after the disaster contract is terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Directors of FEMA, addresses are listed in Appendix AA; the Director, Human Services Division, Response and Recovery Directorate, 500 C Street SW., room 326, Washington DC 20472.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the appropriate system manager. Written requests should be clearly marked, ''Privacy Act Request'' on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORDS ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORDS PROCEDURE:

Same as notification procedure above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. FEMA Privacy Act regulations are at 44 CFR part 6.

RECORD SOURCE CATEGORIES:

Applicants for disaster recovery assistance; credit rating bureaus, financial institutions, insurance companies and agencies providing disaster relief.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Introduction to Routine Uses: Certain routine uses have been identified as being applicable to many of the FEMA systems of record notices. The specific routine uses applicable to an individual system of record notice will be listed under the ''Routine Use'' section of the notice itself and will correspond to the numbering of the routine uses published below. These uses are published only once in the interest of simplicity, economy and to avoid redundancy, rather than repeating them in every individual system notice.

l. *Routine Use—Law Enforcement:* A record from any FEMA system of records, which indicates either by itself or in combination with other information within FEMA's possession, a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to the appropriate agency whether Federal, State, territorial, local or foreign, or foreign agency or professional organization charged with the responsibility of enforcing, or implementing, or investigating, or prosecuting such violation or charged with implementing the statute, rule, regulation or order issued pursuant thereto.

2. *Routine Use—Disclosure When Requesting Information:* A record from a

FEMA system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning hiring or retention of an employee, issuance of a security clearance, letting of a contract, or issuance of a license, grant, or other benefit.

3. *Routine Use—Disclosure of Requested Information:* A record from a FEMA system of records may be disclosed to a Federal agency, in response to a written request in connection with hiring or retention of an employee, issuance of an investigation of an employee, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Routine Use—Grievance, Complaint, Appeal:* A record from a FEMA system of records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with that agency's responsibility for evaluation of Federal personnel management.

To the extent that official personnel records in the custody of FEMA are covered within systems of records published by the Office of Personnel Management as governmentwide records, those records will be considered as a part of that governmentwide system. Other official personnel records covered by notices published by FEMA and considered to be separate systems of records may be transferred to the Office of Personnel Management in accordance with official personnel programs and activities as a routine use.

5. *Routine Use—Congressional Inquiries:* A record from a FEMA system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the direct, written request of the individual about whom the record is maintained.

6. *Routine Use—Private Relief Legislation:* The information contained in a FEMA system of records may be disclosed as a routine use to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

7. *Routine Use—Disclosure to the Office of Personnel Management:* A record from a FEMA system of records may be disclosed to the Office of Personnel Management concerning information on pay and leave benefits, retirement deductions, and any other information concerning personnel actions.

8. *Routine Use—Disclosure to National Archives and Records Administration:* A record from a FEMA system of records may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. *Routine Use—Grand Jury:* A record from any system of records may be disclosed, as a routine use, to a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

Appendix AA

Addresses for FEMA Regional Offices:

Region I—Regional Director, Federal Emergency Management Agency, room 442, J.W. McCormack Post Office and Courthouse Building, Boston, MA 02109–4595;

Region II—Regional Director, Federal Emergency Management Agency, 26 Federal Plaza, room 1338, New York, NY 10278–0002;

Region III—Regional Director, Federal Emergency Management Agency, Liberty Square Building (Second Floor), 105 South Seventh Street, Philadelphia, PA 19106–3316;

Region IV—Regional Director, Federal Emergency Management Agency, 1371 Peachtree Street, NE., suite 700, Atlanta, GA 30309–3108;

Region V—Regional Director, Federal Emergency Management Agency, 175 West Jackson Blvd., 4th Floor, Chicago, IL 60604–2698;

Region VI—Regional Director, Federal Emergency Management Agency, Federal Regional Center, 800 North Loop 288, Denton, TX 76201-3698;

Region VII—Regional Director, Federal Emergency Management Agency, 2323 Grand Boulevard, room 900, Kansas City, MO 64108–2670;

Region VIII—Regional Director, Federal Emergency Management Agency, Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267;

Region IX—Regional Director, Federal Emergency Management Agency, Building 105, Presidio of San Francisco, CA 94129–1250;

Region X—Regional Director, Federal Emergency Management Agency, Federal Regional Center, 130 228th Street SW., Bothell, WA 98021–9796.

Dated: September 10, 1996.

John P. Carey,

General Counsel.

[FR Doc. 96–24320 Filed 9–20–96; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200005–007, 008, 009 & 010.

Title: Port Authority of New York & New Jersey/Maher Terminals Lease Agreement.

Parties: Port Authority of New York & New Jersey Maher Terminals, Inc.

Synopsis: The modifications provide for the substitution of certain open areas for Maher's Fleet Street Terminal, the change of definitions regarding certain ''qualified containers'', the construction of certain berth areas, and the change of definitions regarding certain charges and disposal costs.

Dated: September 17, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–24260 Filed 9–20–96; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Runaway and Homeless Youth Management Information System.

OMB No.: 0970–0123.

Description: In the runaway and home less Youth Act (42 U.S.C. 5701 *et seq.*) Congress mandated that the Department of Health and Human Services (HHS) report regularly on the status of HHS-funded programs serving runaway and homeless youth. In the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801 *et seq.*) Congress mandated that HHS report regularly on the status of HHS-funded Drug Abuse and Prevention Programs (DAPP) serving runaway and homeless youth. Organizations funded under the Runaway and Homeless Youth Program and/or Drug Abuse and Prevention Program are required by statute (42 U.S.C. 5712, 42 U.S.C. 5714–2 and/or 42

U.S.C. 11824) to meet several data collection and reporting requirements, including maintaining client statistical records and submitting annual program reports with regard to the profile of youth and families served and the services provided to them. The RHY MIS data support these organizations as they carry out a variety of integrated, ongoing responsibilities and projects, including legislative reporting requirements, planning and public policy development for runaway and homeless youth programs, accountability monitoring, program management, research, and evaluation.

Respondents: Runaway and Homeless Youth Grantees and Drug Abuse and Prevention Program Grantees.

Annual Burden Estimates:

Instrument	No. of respondent	No. of responses per respondent	Average burden hours per response	Total burden hours
Youth Program status	400	4	2.2	3,466.67
Youth profile	400	4	29.1	46,501.00
Agency profile	400	1	0.17	66.67
Program profile	400	1	1.0	400.00
Staff profile	400	1	1.2	466.67
Coordinating agency	400	1	0.3	133.33
community education	400	1	0.4	166.67
Promotional/instructional materials	400	1	0.2	66.67
Estimated total annual burden hours				51,267.67

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource management Services, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the propose collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 17, 1996.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 96–24226 Filed 9–20–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96M–0332]

Neopath, Inc.; Premarket Approval of the AutoPap® 300 QC System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Neopath, Inc., Redmond, WA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the AutoPap® 300 QC System. After reviewing the recommendation of the Hematology and Pathology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by October 23, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On February 24, 1995, Neopath, Inc., Redmond, WA 98052, submitted to CDRH an application for premarket approval of the AutoPap® 300 QC System. The device is an automated cervical cytology screening device intended for use in the quality control and rescreening of previously screened Papanicolaou (Pap) smear slides. The AutoPap® 300 QC System is to be used only on conventionally prepared Pap smear slides that have been previously classified as within normal limits (WNL) and satisfactory for interpretation by a screening cytologist. The AutoPap® 300 QC System is not intended to replace the current laboratory slide review processes referred to as ''high risk rescreen.''

On August 8, 1995, the Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory

committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 23, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 11, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–24364 Filed 9–18–96; 4:05 pm]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–9042, R–197]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Request for Accelerated Payments; *Form No.:* HCFA–9042; *Use:* These forms are used by fiscal intermediaries to access a provider's eligibility for accelerated payments. Such payment is granted if there is an unusual delay in processing bills. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, and Not for-profit institutions; *Number of Respondents:* 854; *Total Annual Responses:* 854; *Total Annual Hours Requested:* 427.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Maximizing the Effective Use of Telemedicine: A Study of the Effect, Cost Effectiveness, and Utilization Patterns of Consultations via Telemedicine; *Form No.:* HCFA–R–197; *Use:* The major objective of this study is to evaluate the medical and cost effectiveness of three different categories of telemedicine services. *Frequency:* Other (periodically); *Affected Public:* Individuals and households, Business or other for profit, and Not for profit institutions; *Number of Respondents:* 1,819; *Total Annual Responses:* 11,095; *Total Annual Hours Requested:* 1,564.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov , or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 10, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–24214 Filed 9–20–96; 8:45 am]

BILLING CODE 4120–03–P

[MB–100–N]
RIN 0938–AH44

Medicaid Program; Final Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1996

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

ACTION: Notice.

SUMMARY: This notice announces the final Federal fiscal year (FFY) 1996 national target and individual State allotments for Medicaid payment adjustments made to hospitals that serve a disproportionate number of Medicaid recipients and low-income patients with special needs. We are publishing this notice in accordance with the provisions of section 1923(f)(1)(C) of the Social Security Act and implementing regulations at 42 CFR 447.297 through 447.299. The final FFY 1996 State DSH allotments published in this notice supersede the preliminary FFY 1996 DSH allotments that were published in the Federal Register on May 9, 1996.

EFFECTIVE DATE: The final DSH payment adjustment expenditure limits included in this notice apply to Medicaid DSH payment adjustments for FFY 1996.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(13)(A) of the Social Security Act (the Act) requires States to ensure that their Medicaid payment rates include payment adjustments for Medicaid-participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs (referred to as disproportionate share hospitals (DSH)). The DSH payment adjustments are calculated on the basis of formulas specified in section 1923 of the Act.

Section 1923(f) of the Act and implementing Medicaid regulations at 42 CFR 447.297 through 447.299 require us to estimate and publish in the Federal Register the national target and each State's allotment for DSH payments for each Federal fiscal year (FFY). The implementing regulations provide that the national aggregate DSH

limit for a FFY specified in the Act is a target rather than an absolute cap when determining the amount that can be allocated for DSH payments. The national DSH target is 12 percent of the total amount of medical assistance expenditures (excluding total administrative costs) that are projected to be made under approved Medicaid State plans during the FFY. (Note: Whenever the phrases ''total medical assistance expenditures'' or ''total administrative costs'' are used in this notice, they mean both the State and Federal share of expenditures or costs.)

In addition to the national DSH target, there is a specific State DSH limit for each State for each FFY. The State DSH limit is a specified amount of DSH payment adjustments applicable to a FFY above which FFP will not be available. This is called the ''State DSH allotment.''

Each State's DSH allotment for FFY 1996 is calculated by first determining whether the State is a ''high-DSH State'' or a ''low-DSH State.'' This is determined by using the State's ''base allotment.'' A State's base allotment is the greater of the following amounts: (1) The total amount of the State's actual and projected DSH payment adjustments made under the State's approved State plan applicable to FFY 1992, as adjusted by HCFA; or (2) $1,000,000.

A State whose base allotment exceeds 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1996 is referred to as a ''high-DSH State'' for FFY 1996. The FFY 1996 State DSH allotment for a high-DSH State is limited to the State's base allotment.

A State whose base allotment is equal to or less than 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1996 is referred to as a ''low-DSH State.'' The FFY 1996 State DSH allotment for a low-DSH State is equal to the State's DSH allotment for FFY 1995 increased by growth amounts and supplemental amounts, if any. However, the FFY 1996 DSH allotment for a low-DSH State cannot exceed 12 percent of the State's total medical assistance expenditures for FFY 1996 (excluding administrative costs).

The growth amount for FFY 1996 is equal to the projected percentage increase (the growth factor) in a low-DSH State's total Medicaid program expenditures between FFY 1995 and FFY 1996 multiplied by the State's final DSH allotment for FFY 1995. Because the national DSH limit is considered a target, low-DSH States whose programs grow from one year to the next can receive a growth amount that would not be permitted if the national limit was viewed as an absolute cap.

There is no growth factor and no growth amount for any low-DSH State whose Medicaid program does not grow (that is, stayed the same or declined) between FFY 1995 and FFY 1996. Furthermore, because a low-DSH State's FFY 1996 DSH allotment cannot exceed 12 percent of the State's total medical assistance expenditures, it is possible for its FFY 1996 DSH allotment to be lower than its FFY 1995 DSH allotment. This occurs when the State experiences a decrease in its program expenditures between years and its prior FFY DSH allotment is greater than 12 percent of the total projected medical assistance expenditures for the current FFY. For FFY 1996, no States' final State DSH allotments are lower than their final FFY 1995 State DSH allotments.

There is no supplemental amount available for redistribution for FFY 1996. The supplemental amount, if any, is equal to a low-DSH State's proportional share of a pool of funds (the redistribution pool). The redistribution pool is equal to the national 12-percent DSH target reduced by the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the total of the low-DSH State growth amounts. Since the sum of these amounts is above the projected FFY 1996 national 12-percent DSH target, there is no redistribution pool and, therefore, no supplemental amounts for FFY 1996.

As prescribed in the law and regulations, no State's DSH allotment will be below a minimum of $1,000,000.

As an exception to the above requirements, under section 1923(f)(1)(A)(i)(II) of the Act and regulations at 42 CFR 447.296(b)(5) and 447.298(f), a State may make DSH payments for a FFY in accordance with the minimum payment adjustments required by Medicare methodology described in section 1923(c)(1) of the Act. The final FFY 1996 State DSH allotment for the District of Columbia, Iowa, and Nebraska has been determined in accordance with this exception. We have also redetermined the State DSH allotments for FFYs 1993, 1994, and 1995 for the District of Columbia and the State DSH allotment for FFY 1995 for Iowa in accordance with the provisions of section 1923(c)(1) of the Act.

We are publishing in this notice the final FFY 1996 national DSH target and State DSH allotments based on the best available data we received to date from the States, as adjusted by HCFA. These data are taken from each State's actual Medicaid expenditures for FFY 1995 as reported on the State's quarterly expenditure report Form HCFA–64 submissions and the FFY 1996 projected Medicaid expenditures as reported on the February 1996 Form HCFA–37 submission. All data are adjusted as necessary.

II. Calculations of the Final FFY 1996 DSH Limits

The total of the final State DSH allotments for FFY 1996 is equal to the sum of the base allotments for all high-DSH States, the FFY 1995 State DSH allotments for all low-DSH States, and the growth amounts for all low-DSH States. A State-by-State breakdown is presented in section III of this notice.

We classified States as high-DSH or low-DSH States. If a State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures (excluding administrative costs) projected to be made under the State's approved plan in FFY 1996, we classified that State as a ''high-DSH'' State. If a State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures projected to be made under the State's approved State plan under title XIX of the Act in FFY 1996, we classified that State as a ''low-DSH'' State. Based on this classification, there are 35 low-DSH States and 15 high-DSH States for FFY 1996.

Using the most recent data from the States' February 1996 budget projections (Form HCFA–37), we estimate the States' FFY 1996 national total medical assistance expenditures to be $159,875,082,000. Thus, the overall final national FFY 1996 DSH expenditure target is $19,185,010,000 (12 percent of $159,875,082,000).

In the final FFY 1996 State DSH allotments, we provide a total of $368,619,000 ($213,827,000 Federal share) in growth amounts for the 35 low-DSH States. The growth factor percentage for each of the low-DSH States was determined by calculating the Medicaid program growth percentage for each low-DSH State between FFY 1995 and FFY 1996. To compute this percentage, we first ascertained each low-DSH State's total FFY 1995 actual medical assistance and administrative expenditures as reported on the State's four quarterly Medicaid expenditure reports (Form HCFA–64) for FFY 1995. Next, we compared those expenditures to each low-DSH State's total estimated unadjusted FFY 1996 medical assistance and administrative

expenditures as reported to HCFA on the State's February 15, 1996 submission of the Medicaid Budget Report (Form HCFA–37).

The growth factor percentage was multiplied by the low-DSH State's final FFY 1995 DSH allotment amount to establish the State's final growth amount for FFY 1996.

Since the sum of the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the growth for low-DSH States ($19,467,072,000) is greater than the final FFY 1996 national target ($19,185,010,000), there is no final FFY 1996 redistribution pool.

The low-DSH State's growth amount was then added to the low-DSH State's final FFY 1995 DSH allotment amount to establish the final total low-DSH State DSH allotment for FFY 1996. If a State's growth amount, when added to its final FFY 1995 DSH allotment amount, exceeds 12 percent of its FFY 1996 estimated medical assistance expenditures, the State only receives a partial growth amount that, when added to its final FFY 1995 allotment, limits its total State DSH allotment for FFY 1996 to 12 percent of its estimated FFY 1996 medical assistance expenditures. For this reason, five of the low-DSH States received partial growth amounts, and two low-DSH States received no growth amount.

Also, in accordance with the minimum payment adjustments required by Medicare methodology, the final FFY 1996 State DSH allotments for the District of Columbia, Iowa, and Nebraska are $61,854,000, $15,735,000, and $12,031,000, respectively. In addition in accordance with this provision, we have redetermined the State DSH allotments for FFYs 1993, 1994, and 1995 for the District of Columbia to be $47,849,689, $50,669,700, and $52,219,263, respectively, and the State DSH allotment for FFY 1995 for Iowa to be $14,620,261.

In summary, the total of all final State DSH allotments for FFY 1996 is $19,467,072,000 ($11,049,723,000 Federal share). This total is composed of the prior FFY's final State DSH allotments ($19,098,453,000) plus growth amounts for all low-DSH States ($368,619,000), plus supplemental amounts for low-DSH States ($0). The total of all final FFY 1996 State DSH allotments is 12.2 percent of the total medical assistance expenditures (excluding administrative costs) projected to be made by these States in FFY 1996. The total of all final DSH allotments for FFY 1996 is $282,062,000 over the FFY 1996 national target amount of $19,185,010,000.

Each State should monitor and make any necessary adjustments to its DSH spending during FFY 1996 to ensure that its actual FFY 1996 DSH payment adjustment expenditures do not exceed its final State DSH allotment for FFY 1996 published in this notice. As the ongoing reconciliation between actual FFY 1996 DSH payment adjustment expenditures and the FFY 1996 DSH allotments takes place, each State should amend its plan as may be necessary to make any adjustments to its FFY 1996 DSH payment adjustment expenditure patterns so that the State will not exceed its FFY 1996 DSH allotment.

The FFY 1996 reconciliation of DSH allotments to actual expenditures will take place on an ongoing basis as States file expenditure reports with HCFA for DSH payment adjustment expenditures applicable to FFY 1996. Additional DSH payment adjustment expenditures made in succeeding FFYs that are applicable to FFY 1996 will continue to be reconciled with each State's FFY 1996 DSH allotment as additional expenditure reports are submitted to ensure that the FFY 1996 DSH allotment is not exceeded. As a result, any DSH payment adjustment expenditures for FFY 1996 in excess of the FFY 1996 DSH allotment will be disallowed, and therefore, subject to the normal Medicaid disallowance procedures.

III. Final FFY 1996 DSH Allotments Under Public Law 102–234

Key to Chart:

Column and Description

Column A=Name of State

Column B=Final FFY 1995 DSH Allotments for All States. For a high-DSH State, this is the State's base allotment, which is the greater of the State's FFY 1992 allowable DSH payment adjustment expenditures applicable to FFY 1992, or $1,000,000. For a low-DSH State, this is equal to the final DSH allotment for FFY 1995, which was published in the Federal Register on September 8, 1995.

Column C=Growth Amounts for Low-DSH States. This is an increase in a low-DSH State's final FFY 1995 DSH allotment to the extent that the State's Medicaid program grew between FFY 1995 and FFY 1996.

Column D=Final FFY 1996 State DSH Allotments. For high-DSH States, this is equal to the base allotment from column B. For low-DSH States, this is equal to the final State DSH allotments for FFY 1995 from column B plus the growth amounts from column C and the supplemental amounts, if any, from column D.

Column E=High or Low DSH State Designation for FFY 1996. ''High'' indicates the State is a high-DSH State and ''Low'' indicates the State is a low-DSH State.

BILLING CODE 4120–01–P

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FINAL FEDERAL FISCAL YEAR
1996 DISPROPORTIONATE SHARE HOSPITAL
ALLOTMENTS UNDER PUBLIC LAW 102–234
AMOUNTS ARE STATE AND FEDERAL SHARES
DOLLARS ARE IN THOUSANDS (000)

A STATE	B FINAL FFY 95 DSH ALLOTMENTS FOR ALL STATES	C GROWTH AMOUNTS FOR LOW DSH STATES (1)	D FINAL FFY 96 STATE DSH ALLOTMENTS	E HIGH OR LOW DSH STATE DESIGNATION
AL	$417,458	NOT APPLICABLE	$417,458	HIGH
AK	$20,600	$1,100	$21,700	LOW
AR	$3,338	$266	$3,605	LOW
CA	$2,191,451	NOT APPLICABLE	$2,191,451	HIGH
CO	$302,014	NOT APPLICABLE	$302,014	HIGH
CT	$408,933	NOT APPLICABLE	$408,933	HIGH
DE	$7,069	$1,544	$8,613	LOW
DC (2)	$52,219	$9,635	$61,854	LOW
FL	$334,183	$5,835	$340,018	LOW
GA	$409,142	$17,574	$426,717	LOW
HI	$82,686	NOT APPLICABLE	$82,686	LOW
ID	$2,085	$297	$2,382	LOW
IL	$452,172	$90,053	$542,225	LOW
IN	$286,634	$55,505	$342,139	LOW
IA (2)	$14,620	$1,115	$15,735	LOW
KS	$188,935	NOT APPLICABLE	$188,935	HIGH
KY	$264,289	$20,574	$284,863	LOW
LA	$1,217,636	NOT APPLICABLE	$1,217,636	HIGH
ME	$165,317	NOT APPLICABLE	$165,317	HIGH
MD	$143,100	$7,852	$150,952	LOW
MA	$575,289	NOT APPLICABLE	$575,289	LOW
MI	$674,005	$12,473	$686,478	LOW
MN	$61,398	$2,492	$63,890	LOW
MS	$183,200	$17,712	$200,912	LOW
MO	$731,894	NOT APPLICABLE	$731,894	HIGH
MT	$1,342	$75	$1,417	LOW
NE (2)	$11,000	$1,031	$12,031	LOW
NV	$73,560	NOT APPLICABLE	$73,560	HIGH
NH	$392,006	NOT APPLICABLE	$392,006	HIGH
NJ	$1,094,113	NOT APPLICABLE	$1,094,113	HIGH
NM	$17,303	$2,968	$20,272	LOW
NY	$3,023,871	$23,657	$3,047,528	LOW
NC	$430,106	$28,869	$458,975	LOW
ND	$1,203	$59	$1,262	LOW
OH	$629,925	$21,672	$651,596	LOW
OK	$24,225	$796	$25,021	LOW
OR	$31,413	$1,705	$33,118	LOW
PA	$967,407	NOT APPLICABLE	$967,407	HIGH
RI	$110,901	$579	$111,480	LOW
SC	$439,759	NOT APPLICABLE	$439,759	HIGH
SD	$1,443	$113	$1,555	LOW
TN	$430,611	NOT APPLICABLE	$430,611	HIGH
TX	$1,513,029	NOT APPLICABLE	$1,513,029	HIGH
UT	$5,943	$364	$6,307	LOW
VT	$29,081	$2,659	$31,740	LOW
VA	$204,798	$17,207	$222,005	LOW
WA	$336,527	$16,272	$352,800	LOW
WV	$126,094	$6,322	$132,415	LOW
WI	$11,605	$141	$11,746	LOW
WY	$1,520	$103	$1,623	LOW
TOTAL	$19,098,453	$368,619	$19,467,072	

NOTES:
(1) THERE WERE 2 LOW DSH STATES WITH NO GROWTH, AND 5 LOW DSH STATES WITH PARTIAL GROWTH UP TO 12% OF FFY 96 MAP
(2) ALLOTMENT BASED UPON MINIMUM PAYMENT ADJUSTMENT AMOUNT

BILLING CODE 4120–01–C

IV. Regulatory Impact

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

This is not a major rule as defined at 5 U.S.C. 804(2).

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 26, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 16, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–24229 Filed 9–20–96; 8:45 am]

BILLING CODE 4120–01–P

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 61 FR 35219–35228, dated July 5, 1996) is amended to reflect the following changes within the National Center for Health Statistics (NCHS): (1) Abolish the Office of Planning and Extramural Programs; (2) establish the Office of Data Standards, Program Development, and Extramural Programs and the Office of Planning, Budget, and Legislation; and (3) revise the functional statement for the Office of International Statistics.

Section C–B, *Organization and Functions,* is hereby amended as follows:

After the functional statement for the *Office of Research and Methodology (CS13),* delete in their entirely the title and functional statement for the *Office of Planning and Extramural Programs (CS14).*

Revise the functional statement for the *Office of International Statistics (CS15)* by deleting item (5) and renumbering the remaining items accordingly.

After the functional statement for the *Office of International Statistics (CS15),* insert the following:

Office of Data Standards, Program Development, and Extramural Programs (CS16). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) develops proposed policies for the coordination of NCHS programs with external agencies, both public and private; (3) provides leadership, and serves as a focal point, for NCHS outreach efforts to organizations in the public and private sectors; serves a focal point for developing collaborative statistical activities of NCHS with other organizations and agencies, and the development of public/private partnerships in health statistics; facilitates communication with outside agencies regarding program and policy issues; (4) provides a focus for program development and review of policy implications as related to emerging priority data needs of the country; coordinates the assessment of needs and the perspectives of other agencies; participates actively in program planning and policy development by reviewing the relevance of current and proposed programs to defined priorities of need and the requirements of other agencies and principal user groups; (5) evaluates or arranges for the evaluation of the adequacy, completeness, and responsiveness of Center programs both nationally and internationally to the NCHS mission and national priorities. Based on the results of evaluations, makes proposals for changes in NCHS programs or policies and collaborative enterprises; (6) assures leadership in the definition, development, and coordination of cooperative and collaborative programs in health statistics, working with state and local governments, and other organizations including the private and academic sectors in the development and strengthening of shared subnational statistical systems or services to meet the needs of the country; (7) conducts research, analyses, and demonstrations related to subnational systems; (8) develops, pilots, and implements new programs through direct activities and through grants and contracts; organizes Center-wide teams or special work groups for selected high priority initiatives; (9) provides scientific and technical support and Executive Secretariat services to the National Committee on Vital and Health Statistics (NCVHS), the legislatively-mandated advisory committee to the Secretary, DHHS; (10) provides for programmatic review and leadership for the NCHS Reimbursable Work Program; (11) provides guidance and staff support for major Center conferences and committee meetings; (12) provides advice and assistance to outside agencies and organizations in the conduct of statistical training activities; conducts training in key areas, as appropriate; and promotes appropriate training and educational materials for implementation and use of data sets and classification systems and for other purposes; (13) coordinates required clearances for Human Subjects Review; (14) provides leadership and serves as advisor to the Director on policy issues related to data standards and classification systems; (15) provides scientific and technical advice to the DHHS Data Council on data standards and classification issues, and takes a leadership role in HHS-wide workgroups addressing such issues; (16) serves as NCHS's focal point to other organizations regarding efforts to develop minimum data sets, core data sets, data definitions, common approaches to medical and statistical terminology, and other standards-related efforts;

(17) participates with appropriate agencies and organizations to promote the dissemination, adoption, and use of standards advocated by NCHS, DHHS, and the NCVHS; serves as a nucleus for data policy, data standards, and medical classification by fostering the collaborative development of tools and guidelines to enhance the integrity, comparability, quality, and usefulness of the data products from a wide variety of public and private agencies at the national and subnational levels; (18) assures and provides interface of data confidentiality, linkage, and security issues with other data policies and standards; (19) serves as the focal point and coordinator of U.S. Government activities related to the International Classification of Diseases (ICD) and maintains liaison with the World Health Organization through the direction of the WHO Collaborating Center for Classification of Diseases for North America working with appropriate programs throughout NCHS; (20) provides a focus for enhancing collaborative activities in advancing the science and practice of health statistics, stimulating working arrangements with universities, schools of public health, schools of medicine and professional organizations of same; provides a focus for the development of a reliance upon NCHS data for research in these settings and provides leadership for graduate student training and interaction with NCHS.

Data Policy and Standards Staff (CS163). (1) Provides a focus within NCHS for the development and continuing responsive modification of a conceptual framework for a broad-based definition of the basic health information systems of the country; (2) serves as a nucleus for data policy, data standards, and medical classification by

fostering the collaborative development of tools and guidelines to enhance the integrity, comparability, quality, and usefulness of the data products from a wide variety of public and private agencies at the national and subnational levels; (3) establishes and maintains liaison and partnerships with Federal agencies within and outside DHHS and with a wide variety of private and professional organizations to promote uniformity in classifications, data sets, definitions, and related data policies and standards; (4) assures representation of NCHS and takes a leadership role on intra- and interagency task forces and committees reviewing and developing uniform data elements and data sets for diverse health care settings, nomenclatures and classifications; (5) serves as a focal point within NCHS for collaborative activities related to computer-based patient record development; (6) supports the Director, NCHS, as a member of the DHHS Data Council and coordinates NCHS staff support to the Data Council for data policy and standards activities; (7) serves as a focal point for programmatic and subject matter support of the NCVHS; (8) establishes and maintains liaison between NCVHS and agencies within DHHS, other governmental agencies, and relevant private and professional organizations; (9) directs and facilitates cross-cutting national data policy activities that involve multiple outside organizations and have important implications for NCHS and CDC programs; (10) provides liaison with standard-setting organizations on emerging data needs and on medical and health classification issues; (11) is responsible for overseeing, coordinating, evaluating, and formulating recommendations for the ICD Family of Classifications and related classifications, by providing the focus within NCHS for the development and execution of classification activities; (12) serves as the focal point and coordinator of U.S. Government activities related to the ICD and maintains liaison with the World Health Organization through direction of the WHO Collaborating Center for the Classification of Diseases for North America; (13) provides advice and assistance within NCHS and to other agencies and organizations in the conduct of training activities related to data policies and standards; conducts training in key areas as appropriate; and promotes appropriate training and educational materials for implementation and use of data sets and classification systems; (14) assures comparability of morbidity classification, using current and subsequent versions of the ICD for morbidity, and recommends revisions to the ICD for morbidity applications as appropriate; (15) assumes full responsibility for the development and implementation of the evaluation program of NCHS of assessment of the adequacy, completeness, and responsiveness of Center programs both nationally and internationally to the NCHS mission and user needs for data; based on evaluations, makes proposals for changes in NCHS programs or policies; (16) supports and coordinates Human Subjects Review within NCHS; (17) assures and provides interface of data confidentiality, linkage, and security issues with other data policies and standards; (18) participates with appropriate agencies and organizations to promote the dissemination, adoption, and use of data policies and standards advocated by the NCHS, DHHS, and the NCVHS; develops comprehensive policy analyses and special reports, and newsletters.

Program Development Staff (CS163). (1) Develops, pilots, and promotes programs, projects, and special activities to improve the quality, comparability, timeliness, and particularly, the relevance of data with emphasis on those aspects of data collection, analysis, interpretation, and dissemination that require collaboratively-supported systems involving public and private agencies, all levels of government and the international statistical community; (2) develops, pilots, and implements new programs with emphasis on addressing emerging data needs through a synthesis of policy concerns, statistical approaches, scientific research, and data standards by direct activities and through grants and contracts; (3) develops and conducts specialized workshops and conferences to build focused research capacities and foster networks of extramural researchers; (4) promotes public/private extramural funding opportunities through identifying common needs and developing innovative research strategies; (5) develops innovative training programs, materials, and substantive guidelines for use in collaboratively-sponsored and coordinated health statistics activities; (6) responds to unique request for improved approaches or assistance in the planning and conduct of complex statistical enterprises, particularly those involving major policy issues, multiple agencies or levels of government, and operating at the intersect of public health practice and epidemiologic or statistical operations and research; (7) conducts other activities and participates in special projects selected to provide NCHS an opportunity for gaining definitive knowledge regarding major priority needs for data and major barriers to success in collaboratively-sponsored statistical enterprises, with emphasis on projects requiring data for subnational geographic areas and special populations and for multiple levels of government; (8) serves as the focal point for coordination of health statistical activities within NCHS as they relate to data needs and applications by other organizations or agencies; (9) provides program leadership for the NCHS Reimbursable Work Program including the private sector initiatives; (10) provides liaison with other federal departments and encourages interagency collaboration through the conduct of formal interagency meetings, seminars, workshops, and conferences which are designed to promote coordination of NCHS data systems with other federal, national, and international health systems; (11) participates in the dissemination, evaluation, and use of standard health data sets; (12) directs research and development related to data systems for community health profiles and other small area applications; (13) participates in the NCHS longitudinal studies program development and implementation; (14) designs and implements special studies related to other assigned functions; (15) provides planning, management, and operational support for the Center's conference and meeting activities, including the Public Health Conference on Records and Statistics; (16) provides support services for the NCVHS and other committees that may be established and subcommittees thereof; (17 prepares committee charters and proposals for the establishment or termination of committees and subcommittees, prepares nominations for submission to the Secretary, DHHS.

Office of Planning, Budget and Legislation (CS17). (1) Provides a focus for short and long range statistical programs and budget planning, policy development, and program analysis; (2) provides advice on the development of new health statistics programs, translates planning into program proposals for the Center's operations, and organizes Center-wide teams or special work groups for selected high priority initiatives; (3) serves as a focal point for coordination and integration of program activities within NCHS, and facilitates communication within NCHS regarding program and policy issues; (4)

assists the Center Director in the assessment of program accomplishments and the development of program planning through a program review process; (5) provides leadership within NCHS on legislative affairs, develops and coordinates the Center's legislative activities, and serves as principal liaison between NCHS programs and executive and legislative branch officials on legislative affairs; (6) serves as principal advisor in areas of budget and resource development, formulates and presents the NCHS budget, and serves as principal liaison between NCHS programs and budget officials in CDC, DHHS, and OMB; (7) develops fiscal policies, financial management procedures, and systems throughout NCHS, and provides leadership for the direction and improvement of financial management functions; (8) directs and manages the execution of the NCHS budget, including a system of budgetary and expenditure controls, financial reports, and assistance to staff; (9) provides planning, operational review and coordination for the NCHS Reimbursable Work Program, and coordinates required clearances of the program; (10) manages and coordinates NCHS' responsibilities for review and clearance under the Paperwork Reduction Act, and serves as principal liaison between NCHS programs and clearance officials in CDC, DHHS, and OMB; (11) assures that NCHS's confidentiality and privacy policy are consistent with legislative mandates, and that these policies and the Privacy Act are clearly articulated and enforced within NCHS; provides policy leadership and guidance on data sharing and data release agreements; and develops and maintains privacy Act System Notices.

Dated: September 6, 1996.

Claire Broome,

Acting Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–24225 Filed 9–20–96; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

On July 31, 1996, a notice was published in the Federal Register (61 FR 39979) that an application has been filed with the Fish and Wildlife Service by Connel Gower Construction, Inc. for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), threatened Utah Prairie Dog (*Cynomys parvidens*). Anticipated incidental take of this species is in conjunction with otherwise legal activities including construction of commercial and industrial buildings and facilities within a 63-acre industrial complex in Cedar City, Iron County, Utah pursuant to the Implementation Agreement that implements the Habitat Conservation Plan prepared by Connel Gower Construction, Inc.

Notice is hereby given that on September 13, 1996, as authorized by the provisions of the Act, the Service issued an incidental take permit (permit number PRT–817340) to the above-named party subject to certain conditions set forth therein. The permit was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Act, as amended.

Additionally information on this permit action may be obtained by contacting the Assistant Field Supervisor, Fish and Wildlife Service, Utah Ecological Services Field Office, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115, telephone (801) 524–5001, on weekdays between the hours of 7:30 a.m. and 4:30 p.m.

Dated: September 13, 1996.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 96–24246 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[MT–960–1320–03–242A; MTM 83859]

Availability of Environmental Assessment and Request for Comments on the Finding of No Significant Impact; Fair Market Value, and Maximum Economic Recovery; Coal Lease Application MTM 83859—Spring Creek Coal Company

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management announces the availability of the Environmental Assessment (EA) for Spring Creek Coal Company's Federal Coal Lease Application MTM 83859 and requests public comment on the associated Finding of No Significant Impact (FONSI) and Fair Market Value (FMV) and Maximum Economic Recovery (MER) of the coal resources subject to the lease application.

The land included in the Coal Lease Application MTM 83859 is located in Big Horn County, Montana, and is described as follows:

T. 8 S., R. 39 E., P.M.M.
Sec. 22: E½SW¼SW¼;
Sec. 25: SW¼SW¼;
Sec. 26: S½NE¼NE¼SW¼, NW¼NE¼SW¼, N½SW¼NE¼SW¼, SE¼NE¼SW¼, N½N½NW¼SW¼, S½NE¼NW¼SW¼, SE¼NW¼NW¼SW¼, NE¼SE¼NW¼SW¼, S½NW¼SE¼, N½N½SW¼SE¼, SE¼NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼;
Sec. 27: N½SW¼NE¼, N½S½SW¼NE¼, SE¼SE¼SW¼NE¼, S½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼NW¼, N½NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NE¼NW¼SE¼NW¼, NE¼NE¼NE¼SE¼.
T. 8 S., R. 40 E., P.M.M.
Sec. 30: S½NW¼NE¼SW¼, S½NE¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼, W½SE¼SW¼SE¼.
320.00 Acres.

The EA addresses the cultural, socioeconomic, environmental and cumulative impacts that would likely result from leasing these coal lands. Two alternatives are addressed in the EA:

Alternative 1—(Proposed Action) would involve leasing the 320 acre tract, as applied for, which contains about 37.8 million tons of coal. Approximately 247 acres of lands within the application area, inclusive of 48 acres of crucial winter range for deer and antelope and 199 acres currently designated as suitable for leasing with no stipulations, would be redesignated as suitable for leasing with stipulations.

This alternative would also involve redesignating 63 acres of lands within the application area currently designated as suitable for leasing pending further study due to the presence of sage and Sharptail grouse. Approximately 30 of those acres would be redesignated as suitable for leasing with stipulations due to sage grouse wintering habitat. The remaining 33 acres would be outside the grouse habitat and would be suitable for leasing without stipulations.

Alternative 2—(No Action) Reject or deny the coal lease application. The Federal coal lands would not be offered for lease.

The public is invited to submit written comments on the FONSI associated with this proposed action as well as the FMV and MER of the

proposed lease tract. In addition, notice is also given that a public hearing will be held on Tuesday, October 22, 1996, on the FONSI, the proposed lease sale, FMV, and MER.

DATES: Comments must be submitted on or before 4:30 p.m., October 25, 1996. The public hearing will be held Tuesday, October 22, 1996 at 1:00 p.m. at the BLM Miles City District Office, 111 Garryowen Road, Miles City, Montana.

ADDRESSES: Comments or questions may be directed to Todd Christensen, Area Manager, Powder River Resource Area, Bureau of Land Management, 111 Garryowen Road, Miles City, Montana, 59301 (telephone 406–232–4331). Copies of the EA are available at the above address. For more complete data on this tract, please contact Randy Heuscher (telephone 406–255–2816), BLM, 222 North 32nd Street, P.O. Box 36800, Billings, Montana.

FOR FURTHER INFORMATION CONTACT: Dan Benoit, Project Leader, Miles City District Office, phone (406) 232–4331.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Coal Management regulations 43 CFR 3422 and 3425, not less than 30 days prior to publication of notice of sale, the Secretary shall solicit public comments on the proposed sale, FMV, and MER of the proposed lease tract. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked will be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, 222 North 32nd Street, Billings, Montana, during regular business hours, (9:00 a.m. to 4:00 p.m.) Monday through Friday.

Comments should be sent to the BLM, P.O. Box 36800, Billings Montana 59107 and should include but is not necessarily limited to the following:

1. The quantity and quality of the coal resources;

2. The mining method or methods which would achieve MER of the coal including specification of the seams to be mined, timing and rate of production, restriction to mining and inclusion of the tract in an existing mining operation;

3. The FMV appraisal including but not limited to the evaluation of the tract as an incremental unit of the existing mine, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate and any comparable sales data of similar coal lands.

The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Glenn A. Carpenter,

District Manager.

[FR Doc. 96–24003 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–DN–P

[OR–050–1220–00:GP6–0257]

Morrow and Gilliam Counties, OR: Visitor Restrictions

September 10, 1996.

AGENCY: Bureau of Land Management (BLM), Department of the Interior (DOI), Prineville District.

ACTION: Notice is hereby given that the public lands as legally described below are closed seasonally from September 15 to April 15 to all vehicle access and travel.

In Morrow County, Oregon

Township 3 South, Range 23 East, Willamette Meridian,
Section 31: That portion of the SW¼NW¼, the SW¼, the W½ SE¼, and the SE¼SE¼ lying South and West of Hale Ridge Morrow County Road 707.
Section 32: That portion of the SW¼SW¼ lying South and West of Hal Ridge Morrow County Road 707.

In Gilliam County, Oregon

Township 4 South, Range 23 East, Willamette Meridian,
Section 4: That portion of the SW¼SW¼ lying South and West of Hale Ridge Gilliam County Road 707.
Section 5: That portion of the W½SE¼ and the SE¼ of the SE¼ lying South and West of Hale Ridge Gilliam County Road 707.

The aforementioned land located in Morrow and Gilliam Counties, Oregon, near Rock Creek, are seasonally closed from September 15 to April 15 each year. The purpose of this closure is to reduce the spread of noxious weeds in the area by preventing vehicles from transporting and introducing weed seeds during the period of high visitor use, and to protect soil and watershed resources from off-road vehicle damage during periods of muddy conditions.

Exemptions to this closure will apply to administrative and law enforcement personnel of the BLM or Oregon Department of Fish and Wildlife, and personnel performing law enforcement, firefighting, or other emergency duties.

The authority for this closure comes from 43 CFR 8364.1(a): Closure and restriction orders. Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7. A more specific location of public lands under this closure can be obtained at the BLM Prineville District Office.

FOR FURTHER INFORMATION CONTACT: Heidi Mottl, Recreation Planner, BLM Prineville, District Office, P.O. Box 550, Prineville. Oregon 97754, telephone number (541) 416–6700.

Dated: September 10, 1996.

Harry R. Cosgriffe,

Area Manager, Central Oregon Resource Area.

[FR Doc. 96–24231 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–33–M

[NM–018–096–1430–02; NMNM 95857]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Santa Fe County, New Mexico have been examined and found suitable for classification for lease or conveyance of Santa Fe County, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Santa Fe County proposes to use the lands for a Fire Substation, Public Works Substation and Fire Fighters Training Facility.

New Mexico Principal Meridian

T. 20 N, R. 9 E.,
Sec. 18, lots 21, 22, and 23.
Containing approximately 15 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/conveyance, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way of for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the

right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Taos Resource Area, 226 Cruz Alta, Taos, NM 87571.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands of the District Manager, BLM Albuquerque District Office, 435 Montano NE, Albuquerque, New Mexico 87107.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a Fire Substation, Public Works, and Fire Fighters Training Facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for purposed use.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

Michael R. Ford,

District Manager.

[FR Doc. 96–24232 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–050–05–1231–00; 8371]

Arizona: Long-Term Visitor Area Program for 1996–1997 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma District, Arizona, and California Desert District, California, and Revision of Long-Term Visitor Area Boundaries Within the California Desert District, El Centro Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules and revision of Long-Term Visitor Area boundaries within the California Desert District, El Centro Resource Area.

SUMMARY: The Bureau of Land Management (BLM) Yuma District and California Desert District announce revisions to the Long-Term Visitor Area (LTVA) Program. The program, which was instituted in 1983, established designated LTVAs and identified an annual long-term use season from September 15 to April 15. During the long-term use season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated LTVAs and purchase an LTVA permit.

EFFECTIVE DATE: September 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, Yuma Resource Area, 2555 East Gila Ridge Road, Yuma, Arizona 85365, telephone (520) 317–3210; or John Butz, Outdoor Recreation Planner, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507–0714, telephone (909) 697–5200.

SUPPLEMENTARY INFORMATION: The purpose of the LTVA program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of LTVAs assures that specific locations are available for long-term use year after year, and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside of LTVAs, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period.

Authority for the designation of LTVAs is contained in Title 43, Code of Federal Regulations, Subpart 8372, Sections 0–3 and 0–5(g). Authority for the establishment of a LTVA program is contained in Title 43, Code of Federal Regulations, Subpart 8372, Section 1, and for the payment of fees in Title 36, Code of Federal Regulations, Subpart 71.

The Authority for establishing supplementary rules is contained in Title 43, Subpart 8365, Section 1–6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected, and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

The following are the supplemental rules for the designated LTVAs and are in addition to rules of conduct set forth in Title 43, Code of Federal Regulations, Subpart 8365, Section 1–6.

The following supplemental rules apply year-long to all public land users who enter the LTVAs.

1. THE PERMIT. A permit is required to camp in a designated LTVA between September 15 and April 15. The permit authorizes the permittee to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period from September 15 to April 15. There are two types of permits: Long-term and short-visit. The long-term permit fee is $50.00, U.S. funds only, for the entire season and any part of the season. The short-visit permit is $10.00 for seven (7) consecutive days. The short-visit permit may be renewed an unlimited number of times for the cost of $10.00 for seven consecutive days. *No refunds are made on permit fees.*

2. THE PERMIT. To be valid, the short-visit permit or long-term permit decal must be affixed at the time of purchase, with the adhesive backing, to the bottom right-hand corner of the windshield of all transportation vehicles and in a clearly visible location on all camping units. A maximum of two (2) secondary vehicles are permitted.

3. PERMIT TRANSFERS. The permit may not be reassigned or transferred by the permittee.

4. PERMIT REVOCATION. An authorized BLM officer may revoke, without reimbursement, any LTVA permit issued to any person when the

permittee violates any BLM rule or regulation, or when the permittee, permittee's family, or guest's conduct is inconsistent with the goals of BLM's LTVA Program. Failure to return any LTVA permit to an authorized BLM officer upon demand is a violation of this supplemental rule. Any permittee whose permit is revoked must remove all property and leave the LTVA system within 12 hours of notice. The revoked permittee will not be allowed into any other LTVA in Arizona or California for the remainder of the LTVA season.

5. UNOCCUPIED CAMPING UNITS. Camping or dwelling unit(s) must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by an authorized BLM officer.

6. PARKING. For your safety and privacy, you must maintain a minimum of 15 feet of space between dwelling units.

7. REMOVAL OF WHEELS AND CAMPERS. Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. Pickup campers may be set on jacks manufactured for that purpose.

8. QUIET HOURS. Quiet hours are from 10 p.m. to 6 a.m. in accordance with applicable state time zone standards.

9. NOISE. Operation of audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise that disturbs other visitors is prohibited. Within La Posa and Imperial Dam LTVAs, amplified music is allowed only in locations designated by BLM or when approved in advance by an authorized BLM officer.

10. ACCESS. Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

11. STRUCTURES AND LANDSCAPING. Fixed structures of any type are restricted and must conform to posted policies. This includes, but is not limited to fences, dog runs, storage units, and windbreaks. Alterations to the natural landscape are not allowed. Painting rocks or defacing or damaging any natural or archaeological feature is prohibited.

12. LIVESTOCK. Boarding of livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries is permitted only when approved in advance by an authorized BLM officer.

13. PETS. Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for cleanup and sanitary disposal of pet waste.

14. CULTURAL RESOURCES. Do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

15. TRASH. Place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Depositing trash or holding-tank sewage in vault toilets is prohibited. An LTVA permit is required for trash disposal within all LTVA campgrounds except for the Mule Mountain LTVA. The changing of motor oil, vehicular fluids, or disposal and possession of these used substances within an LTVA is strictly prohibited.

16. DUMPING. Absolutely no dumping of sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products. Federal, state, and county sanitation laws and county ordinances specifically prohibit these practices. Sanitary dump station locations are shown in the LTVA brochure. LTVA permits are required for dumping within all LTVA campgrounds except for the Midland LTVA.

17. SELF-CONTAINED VEHICLES. In Pilot Knob, Dunes Vista, Midland, Tamarisk, and Hot Springs LTVAs, camping is restricted to self-contained camping units only. Self-contained units must have a permanent affixed waste water holding tank of 10-gallon minimum capacity. Port-a-potty systems, or systems which utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self-contained. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self-contained camping units, except within 500 feet of a vault or restroom.

18. CAMPFIRES. Campfires are permitted in LTVAs subject to all local, state, and federal regulations. Comply with posted rules.

19. WOOD COLLECTION. No wood collection is permitted within the boundaries of Mule Mountain, Imperial Dam, and La Posa LTVAs. In permitted wood collection areas, only dead, down, and detached wood may be collected for firewood or hobby purposes. Collection and possession of ironwood is regulated to three pieces, not to exceed 10 pounds total in weight. A maximum of 1 cubic yard ($3' \times 3' \times 3'$) natural firewood will be allowed per individual or group campfire at any one time. Please contact the nearest BLM office for current regulations concerning firewood collection.

20. SPEED LIMIT. The speed limit in LTVAs is 15 m.p.h. or as otherwise posted.

21. OFF-HIGHWAY VEHICLE USE. Motorized play is prohibited. Motorized vehicles should be used in LTVAs only for access to and from campsites.

22. VEHICLE USE. It is prohibited to operate any vehicle in violation of state or local laws and regulations relating to use, standards, registration, operation, and inspection.

23. FIREARMS. The discharge or use of firearms or weapons is prohibited inside or within ½ mile of the LTVAs. Comply with all State laws, rules and regulations pertaining to the use and display of firearms.

24. VENDING PERMITS. Any commercial activity requires a vending permit. Please contact the nearest BLM office for information on vending or concession permits.

25. AIRCRAFT USE. Landing or taking off of aircraft, including ultralights and hot air ballons, is prohibited in LTVAs.

26. PERIMETER CAMPING. No camping is allowed within 1 mile of the Hot Spring, Tamarisk, and Pilot Knob LTVA boundaries.

27. HOT SPRING SPA AND DAY USE AREA: Food, beverages, glass containers, soap, and pets are prohibited within the fenced-in area at the Hot Springs Spa. Day use hours are 5 a.m. to midnight.

28. MULE MOUNTAIN LTVA. All camping within Wiley's Well and Coon Hollow campgrounds is restricted to designated sites only and is limited to one (1) camping or dwelling unit per site.

29. IMPERIAL DAM AND LA POSA LTVAS. Overnight occupancy is prohibited in desert washes in Imperial Dam and La Posa LTVAs.

30. LA POSA LTVA. Access to La Posa LTVA is restricted to legal access roads along U.S. Highway 95. Construction and use of other access points are prohibited. This includes removal and modification of barricades, such as fences, ditches, and berms.

31. POSTED RULES. Observe all posted rules. Individual LTVAs may have additional specific rules. If posted rules differ from these supplemental rules, the posted rules take precedence.

32. OTHER LAWS. LTVA permit holders are required to observe all Federal, state, and local laws and regulations applicable to the LTVA and shall keep the LTVA and, specifically, their campsite, in a neat, orderly, and sanitary condition.

33. LENGTH OF STAY. Length of stay in an LTVA between April 16 and September 14 is limited to 14 days in a

28-day period. After the 14th day of occupation, campers must move outside of a 25-mile radius of the previous location.

The following are the revised boundaries for the LTVAs located within the California Desert District, El Centro Resource Area.

Dunes Vista LTVA

San Bernardino Base Meridian,

T. 16 S., R. 20 E.,
Sec. 14, S½SW¼SE¼SW¼, SW¼SE¼SE¼SW¼, E½SE¼SE¼SW¼SW¼,
Sec. 23, NW¼NE¼NE¼NW¼, N½NW¼NE¼NW¼, W½NE¼NE¼NE¼NW¼, 17.5 acres.

Tamarisk LTVA

San Bernardino Base Meridian,

T. 17 S., R. 18 E.,
(Sec. 4,) NW¼NW¼NE¼, W½NE¼NW¼NE¼, 15 acres.
(Sec. 4,) NW¼NW¼NE¼, W½NE¼NW¼NE¼, 15 acres.

Pilot Knob LTVA

San Bernardino Base Meridian,

T. 16 S., R. 21 E.,
Sec. 28, NE¼, 160 acres.

Hot Springs LTVA

San Bernardino Base Meridian,

T. 16 S., R. 16 E.,
Sec. 12, W½NW¼NE¼, SW¼NE¼, NE¼NW¼, E½SE¼NW¼, W½SE¼,
Sec. 13, E½SW¼NW¼NE¼, S½SE¼NW¼NE¼, SW¼NE¼, W½SE¼NE¼, W½NE¼SE¼, E½NW¼SE¼, E½W½NW¼SE¼, N½SW¼SE¼, NW¼SE¼SE¼ 355 acres.

This notice is published under the authority of Title 43, Code of Federal Regulations, Subpart 8365, Section 1–6.

Ed Hastey,

State Director, California.

Lonna M. O'Neal,

Acting Associate State Director, Arizona.

[FR Doc. 96–24000 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–32–P

National Park Service

30 Day Notice of Submission to OMB, Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice of submission to OMB and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 3507(a)(1)(D)) the National Park Service invites public comments on a proposed information collection request (ICR) which has been submitted to OMB for approval. The ICR has been changed to include the provisions of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) regulations. Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

THE PRIMARY PURPOSE OF THE PROPOSED ICR: To evaluate all offers received in response to prospectuses issued by the National Park Service for concession opportunities, determine which among them is the best offer for purposes of contract award, and, to determine the status of persons making offers who assert that they are entitled to a preference to such concession opportunity pursuant to section 1307 of the Alaska National Interest Land Conservation Act (16 U.S.C. 1307).

DATES: Public Comments will be accepted for thirty days from the date of publication of this notice.

ADDRESSES: Send comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for the Interior Department (1024–0125), Washington, D.C. 20503. Also send a copy of these comments to: Mr. Robert K. Yearout, Program Leader, Concession Management Program, National Park Service, Washington, D.C. 20013–7127

All comments will become a matter of public record. Copies of the proposed ICR requirement can be obtained from Ms. Wendelin M. Mann, Senior Concession Contract Analyst, Concession Management Program, National Park Service, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Wendelin M. Mann, 202–343–1561.

SUPPLEMENTARY INFORMATION:

Title: Offer to provide National Park Service concession facilities and services.

Form: None.

OMB Number: 1024–0125.

Expiration date: 2/28/97.

Types of request: Submission of an offer in response to a concession prospectus.

Description of need: Regulations at 36 CFR, Part 51 require the submission of offers by all interested parties. Regulations at 36 CFR, Part 13 require the submission of information by persons asserting that are entitled to a concession opportunity preference under section 1307 of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 1307).

Description of respondents: Businesses and other for profit organizations, individuals and not-for-profit organizations.

Estimated annual reporting burden: 76,800 burden hours.

Estimated average burden hours per offer: 480 burden hours for large operations; 240 burden hours for small operations.

Estimated average number of respondents: 240.

Estimated frequency of response: Once.

Dated: September 17, 1996.

Terry N. Tesar,

Information Collection Clearance Officer, Audit and Accountability Team Office, National Park Service.

[FR Doc. 96–24228 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan, Final Environmental Impact Statement, Lava Beds National Monument, Record of Decision

SUMMARY: Pursuant to Section 102 (2) (C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), and specifically to regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the National Park Service, Department of the Interior, has approved a Record of Decision (ROD) for the Final General Management Plan and Environmental Impact Statement, Lava Beds National Monument, California.

The National Park Service will implement the proposed plan as identified in the Final Environmental Impact Statement, issued in June, 1996.

Copies of the Record of Decision and final environmental impact statement may be obtained by writing to the Superintendent, Lava Beds National Monument, P.O. Box 867, Tulelake, Ca. 96134, or by calling the park at (916) 667–2282.

Dated: September 17, 1996.

Patricia L. Neubacher,

Acting Field Director, Pacific West Area.

[FR Doc. 96–24291 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–70–P

National Capital Area; Mary McLeod Bethune Council House National Historic Site Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mary McLeod Bethune Council House National Historic Site Advisory Commission will be held on October 9, 1996, at 10 a.m., at the Bethune Council House National Historic Site, 1318 Vermont Avenue, NW., Washington, DC 20005.

The Commission was authorized on December 11, 1991, by Public Law 102–211, for the purpose of advising the Secretary of the Interior in the development of a General Management Plan for the Mary McLeod Bethune Council House National Historic Site.

The members of the Commission are as follows: Dr. Dorothy I. Height; Ms. Barbara Van Blake; Ms. Brenda Girton-Mitchell; Dr. Savanna C. Jones; Dr. Bettye J. Gardner; Dr. Bettye Collier Thomas; Mr. Eugene Morris; Dr. Rosalyn Terborg-Penn; Mrs. Bertha S. Waters; Dr. Frederick Stielow; Dr. Sheila Y. Flemming; Dr. Ramona Edelin; Mrs. Romaine B. Thomas; Ms. Brandi Lynette Creighton; and Dr. Janette Hoston Harris.

This is the first meeting of the Commission. The purpose of the meeting will be to discuss the election of officers, Commission bylaws, rules and regulations, and general business. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting or who wish to file a written statement or testify at the meeting may contact Ms. Marta C. Kelly, the Federal Liaison Officer for the Commission, at (202) 332–1233. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Bethune Council House National Historic Site.

Dated: September 12, 1996.

Robert Stanton,

Field Director, National Capital Area.

[FR Doc. 96–24292 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before October 23, 1996, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM has submitted to OMB for extension. These collections are contained in: (1) 30 CFR Part 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs; (2) 30 CFR Part 886, State and tribal reclamation grants; (3) 30 CFR Part 887, Subsidence insurance program grants.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for OSM's regulations are listed in 30 CFR Parts 700 through 955. As required under 5 CFR 1320.8(d), Federal Register notices soliciting comments on these collections of information were published on June 24, 1996 (61 FR 32460) for 30 CFR Part 800, and on June 19, 1996 (61 FR 31147) for 30 CFR Parts 886 and 887. No comments were received on any of the collections of information.

Where appropriate, OSM has revised burden estimates to reflect current reporting levels, adjustments based on reestimates of the burden or number of respondents, and programmatic changes. OSM will request a 3-year term of approval for each information collection activity.

The following information is provided for each information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs—30 CFR 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR Part 800 primarily implement § 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 19,398.

Total Annual Burden Hours: 174,692 hours.

Title: State and Tribal Reclamation Grants—30 CFR 886.

OMB Control Number: 1029–0059.

Summary: States and Indian tribes participating in the Abandoned Mined Land Reclamation Fund (AMLR) Program are requested to cooperate with OSM in developing budget information for use by the Director, OSM, in the preparation of his request to Congress for appropriation of monies from the AMLR as authorized by section 405(f) of the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: OSM–49.

Frequency of Collection: Annually.

Description of Respondents: State and Tribal reclamation authorities.

Total Annual Responses: 26.

Total Annual Burden Hours: 130 hours.

Title: Subsidence Insurance Program Grants—30 CFR 887.

OMB Control Number: 1029–0107.

Summary: States having an approved reclamation plan may establish, administer and operate self-sustaining state-administered programs to insure private property against damages caused by land subsidence resulting from underground mining. States interested in requesting monies for their insurance programs would apply to the Director of OSM.

Bureau Form Number: None.
Frequency of Collection: Once.
Description of Respondents: States with approved coal reclamation plans.
Total Annual Responses: 0.
Total Annual Burden Hours: 1.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 120—SIB, Washington, DC 20240.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Dated: September 17, 1996.

Arthur W. Abbs,

Chief, Division of Regulatory Support.

[FR Doc. 96–24293 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–05–M

Fern Lake Watershed, Tennessee, Lands Unsuitable for Surface Coal Mining And Reclamation Operations; Availability of Record of Decision and Statement of Reasons

AGENCY: Office of Surface Mining Reclamation and enforcement, Interior.

ACTION: Notice of availability of record of decision and the statement of reasons on the petition to declare certain lands in the Fern Lake Watershed, Tennessee, unsuitable for surface coal mining.

SUMMARY: The Director of the Office of Surface Mining Reclamation and Enforcement (OSM) has reached a decision on a petition to designate an area as unsuitable for surface coal mining operations in the Fern Lake watershed, Claiborne County, Tennessee.

ADDRESSES: Copies of the decision and the statement of reasons for the decision may be obtained from the Assistant Director, Program Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, HDQ01, Washington, D.C. 20240, or Willis L. Gainer, Supervisor, Technical Group, Knoxville Field Office, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902; telephone: 423/545–4074.

SUPPLEMENTARY INFORMATION: The petition was submitted to OSM on February 14, 1994, by the City of Middlesborough, Kentucky, and the National Parks and Conservation Association to designate 3780 acres of land lying in the Fern Lake watershed, Caliborne County, Tennessee, as unsuitable for all types of surface coal mining operations. OSM determined the petition to be complete on March 15, 1994, and initiated evaluation of the petition allegations.

The petition was filed in accordance with Section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing regulations at 30 CFR 942.764. The petitioners alleged that: (1) Surface coal mining operations would affect fragile lands and could result in significant damage to important scientific or esthetic values or natural systems; (2) surface coal mining operations would affect land in which the surface coal mining operations could result in a substantial loss or reduction in the long-range availability of water supplies; (3) surface coal mining operations would be incompatible with the local land use plans of the Cumberland Gap National Historic Park; and (4) surface coal mining operations should not be allowed because the area constitutes a natural hazard land. Pursuant to 30 CFR 942.764, OSM analyzed the allegations of the petition and on March 12, 1996, held a public hearing. OSM filed the final petition evaluation document/environmental impact statement (PED/EIS) for the Fern Lake petition with the Environmental Protection Agency (EPA) on August 2, 1996. The EPA subsequently published the notice of availability on August 9, 1996 (61 FR 41607).

A copy of the decision signed by the Director appears as an appendix to this notice. Additional copies of the decision and copies of the statement of reasons (not attached to this notice) are available at no cost from the offices listed above under **ADDRESSES** OSM has sent copies of these documents to all interested parties of record.

Prior Federal Register notices on the Fern Lake unsuitability petition were the notice of intent to prepare an EIS published in the Federal Register dated April 6, 1994 (50 FR 31177), and the notice of availability of the draft combined PED/EIS dated January 26, 1996 (61 FR 2531).

Dated: September 13, 1996.

Mary Josie Blanchard,

Assistant Director, Program Support

Appendix: Copy of Decision

Petition To Designate Certain Lands in the Fern Lake Watershed, Tennessee, as Unsuitable for Surface Coal Mining Operations

Under Section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1272, the Office of Surface Mining Reclamation and Enforcement (OSM) was petitioned by the City of Middlesborough and the National Parks and Conservation Association to designate certain private lands in the Little Yellow Creek (Fern Lake) watershed, Claiborne County, Tennessee, as unsuitable for all surface coal mining operations.

As required by Section 522(c) of SMCRA, public comments were solicited on the Fern Lake unsuitability petition; a public hearing was held near the petition area in Middlesborough, Kentucky; and a detailed petition evaluation document/environmental impact statement (PED/EIS) was prepared by OSM. The PED/EIS evaluated the petition allegations, the potential coal resources of the petition area, the demand for coal resources, and the impacts of alternative petition decisions available to the decision maker on the entire range of resource elements in the social and physical environment.

I have considered the following information in the course of making this decision on the petition: The draft and final PED/EIS documents; the allegations of the petitioners; comments in the form of oral testimony at the public hearing; and written submissions received during the comment period (which ended March 26, 1996) by Federal agencies, State agencies, local agencies, and members of the public and industry. Other information considered in my decision included meetings with the petitioners, landowners, leaseholders, and officials of the Cumberland Gap National Historical Park. On the basis of all information that is in the record of this proceeding, I have reached the following decision: Designate the entire petition area as unsuitable for all surface coal mining operations but allow underground mining from outside the petition area.

OSM has previously approved permits to extract approximately 3.4 of the estimated 4.3 million tons of the petition area's underground minable

reserves from entries located outside the petition area. Permits for these operations were in effect prior to the receipt and processing of the Fern Lake petition. As a result, these and similar operations which propose to mine coal by underground methods from entries located outside the petition area will not be affected by this decision.

Copies of this decision will be sent to all parties in this proceeding. The decision will become effective on the date of the signing of the ''Statement of Reasons.'' Any appeal from this decision must be filed within 60 days from the date in the United States District Court for the Eastern District of Tennessee, as required by Section 526(a)(1) of SMCRA, 30 U.S.C. 1276(a)(1).

Dated: September 13, 1996.

Robert J. Uram,

Director, Office of Surface Mining Reclamation and Enforcement.

Petition To Designate Certain Lands in the Fern Lake Watershed, Tennessee as Unsuitable for Surface Coal Mining Operations; Statement of Reasons

I. Introduction

In response to a petition filed by the City of Middlesborough, Kentucky, and the National Parks and Conservation Association, I have decided to designate the entire petition area as unsuitable for all surface coal mining operations while allowing underground mining from entries located outside the Fern Lake petition area in Claiborne County, Tennessee. This decision takes into account all of the information contained in the petition; the draft and final petition evaluation document/environmental impact statement (PED/EIS); information provided by the petitioners; comments in the form of oral testimony at the public hearing; and written submissions received during the comment period (which ended March 26, 1996) by Federal, State and local agencies, and members of the public and industry. Other information considered in my decision included meetings with the petitioners, landowners, leaseholders, and officials of the Cumberland Gap National Historical Park. The following is a discussion of the reasons supporting my decision.

II. Legal Background

Section 522(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) allows any person having an interest that is or may be adversely affected to petition to have an area designated unsuitable for surface coal mining operations. The Secretary of the Interior is responsible, under Section 504 of SMCRA, for designating lands in Tennessee as unsuitable. Specific procedures for processing a petition to designate private lands in Tennessee appear in 30 CFR 942, Subchapter F. The Office of Surface Mining Reclamation and Enforcement (OSM) has followed those procedures in reaching its decision on the Fern Lake petition. The Secretary of the Interior has delegated to the Director of OSM the authority to make a final decision on lands unsuitable petitions except for noncoal mining [216 DM.1.1].

The regulatory authority shall designate an area unsuitable if it determines that reclamation pursuant to the requirements of SMCRA is not technologically and economical feasible [Section 522(a)(2)]. The regulatory authority may designate any area unsuitable if such operations would: (1) Be incompatible with existing State or local land use plans or programs [Section 522(a)(3)(A)]; (2) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems [Section 522(a)(3)(B)]; (3) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products [522(a)(3)(C)]; or (4) affect natural hazard lands in which such operations could substantially endanger life or property [Section 522(a)(3)(D)].

The petition in this case requests that the designation of the Fern Lake watershed be made on the basis of criteria cited under 522(a)(3) (A), (B), (C) and (D). The petition contained numerous suballegations and documentation to support its claim that the area should be designated under these discretionary criteria.

III. Events

The petition area encompasses a portion of the Little Yellow Creek watershed, an area of approximately 5.9 square miles, located in north-central Claiborne County, Tennessee. Little Yellow Creek drains into Fern Lake, a 110-acre public water supply lake for Middlesborough, Kentucky. Approximately 45 acres of this lake is in the petition area while the remainder of the lake is in Kentucky. Because the lake constitutes the most significant feature of the watershed, the petition is herein identified as the Fern Lake petition.

The Fern Lake unsuitability petition was submitted to OSM on February 14, 1994, by the City of Middlesborough, Kentucky, and the National Parks and Conservation Association. OSM determined the petition to be complete on March 15, 1994, and initiated evaluation of the petition allegations.

Because the decision on this petition may have a major effect on the quality of the human environment, OSM decided to prepare a combined petition evaluation document and environmental impact statement. A notice of intent to prepare a draft PED/EIS, including a request for public participation in determining the scope of the issues to be addressed, was published in the April 6, 1994, Federal Register (50 FR 31177) and in the local newspaper. It was also mailed to all persons with an identifiable ownership interest in the petition area and interested State and Federal agencies. A scoping meeting was held on April 18, 1994, in Middlesborough, Kentucky. Approximately 140 persons attended the scoping meeting, 40 of whom presented oral comments.

By the close of the comment period on May 18, 1994, OSM had received 31 scoping comment letters. All comments contained in the public record for the petition and the proposed PED/EIS were used in determining the scope of the PED/EIS.

OSM announced the availability of the draft PED/EIS and requested public comments in the January 26, 1996 (61 FR 2531), Federal Register, in the February 1996, Tennessee Administrative Register; and in local newspapers. Notice of the March 12, 1996 public hearing also was made in these notices and newspaper advertisements. The public comment period on the draft officially closed on March 26, 1996; however, OSM did consider comments received until July 1, 1996.

Approximately 30 persons attended the March 12, 1996 hearing with 7 persons presenting oral comments. During the comment period, 111 letters (with more than 300 signatures) provided written comments on the draft PED/EIS. All comments were considered by OSM in the final PED/EIS.

The notice of availability of the final PED/EIS was published in the Federal Register on August 9, 1996 (61 FR 41607); in the Middlesboro Daily News on August 9, 1996; and in the Claiborne Progress on August 14, 1996.

IV. The Petition

The Fern Lake petition contained four primary allegations, with a number of suballegations. The petition is printed in appendix C of the final PED/EIS. The petitioners allege that: (1) The petition

area is a fragile area, and mining could result in significant damage to important historical, cultural, scientific, and esthetic values and natural systems; (2) surface mining would result in a substantial loss or reduction in the long-range availability of water supplies; (3) surface mining would be incompatible with local land use plans and programs, including the Cumberland Gap National Historical Park; and (4) surface coal mining operations would affect natural hazard lands which are subject to frequent flooding.

V. Decision Alternatives

OSM evaluated several decision alternatives ranging from designating all lands in the petition area unsuitable for all or certain types of surface coal mining operations to not designating any of the lands in the area as unsuitable. The alternatives include the option of designating only parts of the area as unsuitable for all or certain types of surface coal mining operations. However, underground mining from entries located outside the petition area would not be precluded regardless of a decision by the Director. This was based on the fact that 3.4 million of the petition area's estimated 4.3 million tons of underground recoverable reserves are already under permits which allow extraction by this method. The full text discussion of the decision alternatives and their environmental impacts are found in Chapter V of the final PED/EIS.

VI. Preferred Alternative

The Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act require an agency preparing an environmental impact statement to identify its preferred alternative [40 CFR 1502.14(e)]. OSM's preferred alternative for the Fern Lake unsuitability petition is alternative 1 in the final PED/EIS. This alternative includes the designation of all parts of the petition area as unsuitable for surface coal mining operations while allowing the continuation of underground mining from entries located outside the petition area. A detailed discussion of the existing environmental resources and the impacts of the preferred alternative can be found in the final PED/EIS in chapter II and chapter V, section A, respectively.

VII. Findings

These findings are based upon all the information contained in the public record of the proceedings on the petition. In accordance with 30 CFR 942.764.13(b)(1)(v), OSM assumed that contemporary mining practices under the Federal Program for Tennessee would be followed if the area were to be mined. The petition allegations and my findings with regard to each allegation and suballegations follow.

A. Allegation No. 1 is that surface coal mining operations will affect fragile lands in which such operations would result in significant damage to important scientific or esthetic values or natural systems. The petitioners supported this allegation with five suballegations. However, several of these suballegations were repetitive so the allegations were grouped into four broader suballegations for the purpose of analysis and are described and answered as follows:

1. The petitioners allege that Little Yellow Creek is a water body of high quality in chemical, biological, and ecological terms, both regionally and specifically within the Yellow Creek watershed. The petitioners have specifically identified Little Yellow Creek as having a unique water quality making it a good reference stream for comparison with other heavily mined watersheds in the region. They also state that the water quality has resulted in the preservation of sensitive aquatic species. Data collection showed that the blackside dace species, listed as an endangered fish species in Tennessee and a Federally listed threatened species, exists in the petition area; however, no other sensitive aquatic species were identified. The blackside dace are susceptible to changes in water chemistry and sedimentation associated with surface coal mining. The petitioners further stated that the water quality and aquatic ecosystem act to replenish degraded downstream reaches of Yellow Creek.

Based on the results of the sedimentation investigations conducted during the course of the PED/EIS, it was found that the Fern Lake watershed would be subjected to increased sediment loading as a result of surface coal mining operations. It has also been determined that a large portion of this sediment loading would be from uncontrolled drainage associated with haul roads and would be clay faction colloidal material which could not easily be retained by standard sediment ponds without additional water treatment techniques. Any additional treatment, such as flocculants to remove the colloidal clay material, could affect water chemistry and affect the blackside dace [PED/EIS:page IV–3]. As a result, I have determined that potential increase in sediment loading, in the absence of extraordinary control measures, would dramatically impact the thriving population of blackside dace in Little Yellow Creek. [PED/EIS:page V–9].

The PED/EIS determined that the waters in Fern Lake basin are of higher water quality than many adjacent watersheds. The effects of mining on the surface-water quality of Little Yellow Creek can already be seen. Future mining would increase the nutrient levels in the stream and lake. Specific aquatic toxicity from metals and trace elements is not projected from mining the watershed. However, local toxicity in some tributaries is possible. More importantly, the nutrient loading caused by the mining would change the aquatic ecosystem. Large influxes of sulfates and other dissolved solids would be expected to affect the competitiveness of some aquatic species. The lack of toxicity data on the blackside dace makes predictions difficult, but experience in the Little Clear Creek watershed suggests that mining and the blackside dace are not compatible. As a result of the sedimentation and water quality investigations, I have determined that the sedimentation of Little Yellow Creek, more so than the changes in water chemistry, would adversely affect the blackside dace [PED/EIS: page V–9].

The petitioners have also alleged that the high water quality and diverse aquatic biota of the Fern Lake watershed help to restore the downstream reaches of Yellow Creek and the Upper Cumberland River basin which have already had a major impact from surface coal mining operations. The baseline information in chapter II indicates that Little Yellow Creek above Fern Lake provides little flow during the dry months and has been seen to go completely dry in some segments. Furthermore, the lake discharges water only from the emergency spillway. During summer and fall when rains become infrequent, the evaporation and pumpage from the lake exceed the inflows to the lake. This causes lake water levels to drop below the spillway elevation eliminating any surface-water discharge to lower stream segments. As a result, during low flow periods Little Yellow Creek below the Fern Lake dam flows as a result of dam seepage and ground-water recharge. Sampling of water below the dam in the summer of 1994 revealed fair water quality but high total dissolved solids, elevated sulfates, and some iron. Thus, the data does not support the petitioners' allegation that the Fern Lake watershed helps replenish the downstream degraded reaches. While contributions do occur during high flows and spring runoff events, the contribution during chemically critical

low flows does not appear to be major. As a result of these studies, I have determined that the petition area does not significantly contribute to the restoration of downstream reaches of Yellow Creek. [PED/EIS: page IV–9]

Associated with the other suballegations, the petitioners contend that the high water quality in the petition area makes it a biological refuge for fish and aquatic species. This refuge acts to replenish degraded downstream reaches. OSM findings show that Little Yellow Creek, including Davis Branch, supports aquatic resources that are more diverse than most of the Yellow Creek watershed. Of principle significance is the diverse fishery which supports a population of the blackside dace in Davis Branch which is a tributary to lower Little Yellow Creek. Additionally, the presence of blackside dace in Little Yellow Creek upstream of Fern Lake also represents an aquatic refuge for that species. Although Fern Lake is a high quality aquatic resource, the lake itself is less important as an aquatic refuge in that it serves as a barrier to downstream translocation of native species and promotes potentially nuisance aquatic species. As a result of these findings, I have determined that Fern Lake itself acts as a barrier to the successful translocation of upstream species in the petition area to the degraded downstream reaches. However, the high water quality in the Little Yellow Creek watershed upstream of the Lake does act as a biological refuge for various species which are intolerant of water chemistry alterations associated with mining. [PED/EIS: page IV–11–12]

The petitioners allege that the high water quality and aquatic systems of the petition area make it a reference stream for comparing to other impacted watersheds in the area. The PED/EIS determined that, based on the evidence provided by the petitioners, there is insufficient rationale to consider Little Yellow Creek suitable as a reference stream. The findings do verify that Fern Lake and the Little Yellow Creek tailwaters immediately below Fern Lake are high quality water bodies. They also find that water chemistry and physical habitat characterization of Little Yellow Creek upstream of Fern Lake are indicative of a relatively higher quality than most of Yellow Creek proper and its major tributaries. However, OSM's analyses of biological communities in upper Little Yellow Creek indicate moderate reduction in biological diversity when compared with that in Davis Branch, which is a protected tributary within the boundaries of the national park. Additionally, habitat alteration and associated shift in the biological community as a result of impoundment of Little Yellow Creek limit the importance of Fern Lake as a reference water body in the Yellow Creek drainage. The fact that mining has already occurred and is having some impact on the water quality and aquatic ecosystem further reduces the viability of the area as a reference stream. Based on these findings, I have determined that Little Yellow Creek in the petition area would not meet the criteria needed to be a reference stream and that there are better streams available in the general area which are less affected by previous mining and afford higher biological diversity. [PED/EIS: page IV–12–14]

2. The petition states that surface coal mining operations would result in visual impacts resulting from the alteration of the land surfaces associated with mining and reclamation activities. They state that these visual impacts would be incompatible with the goals of the Cumberland Gap National Historical Park, which depend on the natural unspoiled, scenic splendor of the vistas from the Pinnacle and other overlooks to help convey a sense of the historic and cultural importance of the Cumberland Gap in American history. They also state that the deforestation and mining-related activities will alter the landscape as seen from overlooks, adversely affecting the primitive experience of park visitors. Because of the regrouping of allegations, the alleged incompatibility of surface coal mining with the goals of the Cumberland Gap National Historical Park's Master Plan is addressed in this document under Allegation No. 3 which concerns local land use plans.

In response to this allegation, OSM determined that surface coal mining within the petition area would adversely affect the area as a landscape resource. Surface mining would affect both the visual quality and value of the Pinnacle Overlook, and the subjective response of the visitor. OSM determined that the Fern Lake petition area is not a pristine viewshed, based on the number of past mining activities both within and adjacent to the petition area. However, OSM also determined that much of this older mining is now reclaimed and not readily visible, giving the current undisturbed appeal. Should surface mining activity occur in the petition area, the current wooded appearance of Fern Lake watershed would change following mining, particularly in the short to medium time frame, decreasing the scenic quality of the view. However, reclamation to approximate original contour and postmining revegetation would minimize most of the long-term impacts as it has with the previous mining in the petition area. Based on this information, I have determined that there would be an adverse impact on visual quality associated with the park. However, these types of impacts, which have been historically occurring within the petition area, are generally of a short to medium duration and should not cause any permanent impact to the visual quality of the area. [PED/EIS: page IV–14–16]

3. The petitioners allege that surface coal mining would significantly diminish the recreational experience of visitors to Cumberland Gap National Historical Park. The petitioners support this by stating that surface coal mining activities would alter the visual quality of the park which depends on the natural unspoiled, scenic splendor of the vistas from the Pinnacle and other overlooks to help convey a sense of the historic and cultural importance of the area in American history. They state that deforestation and mining-related disturbances would alter the landscape and adversely affect the primitive experience of the park visitor. They further allege that the area of ''recreational value due to high environmental quality'' and should be considered as fragile lands.

OSM findings support the petitioners' allegation in that surface coal mining operations would be expected to affect the visual quality of the Cumberland Gap National Historical Park, thus impacting the visitor's recreational experience [PED/EIS: page IV–16–17]. OSM also recognized that Cumberland Gap is a unique feature which provides special recreational opportunities because of its historical and cultural background. The Cumberland Gap is a break in the Appalachian Mountains that allowed westward expansion of the United States to occur in the late 1700's. The route through the gap also played an important role for Colonists to move westward prior to the Revolutionary War. Because of this historical and cultural association with the gap, I have determined that the area is unique and that similar esthetic values and recreational opportunities at other public use lands would not provide an appropriate substitute for those found at the Cumberland Gap National Historical Park. For these historical and cultural values of the park, I conclude that its natural visual character is important. However, for recreationists who are not concerned with historical or cultural aspects, the Cumberland Gap National Historical Park is not considered unique, nor would mining be expected to drastically reduce the recreational

experience of those who are involved with more conventional use of the park such as hiking, camping, picnicking, and fishing.

4. The petitioners refer to analyses performed by the Commonwealth of Kentucky in granting the Lands Unsuitable Petition 87–2 for the Cannon Creek Lake watershed. Petitioners allege these analyses demonstrate that impacts from surface coal mining operations ''could result from the surface disturbances associated with coal mining activities and discharges of water which have been demonstrated to be major in terms of both the water supply systems and the natural systems with the lake.'' Petitioners argue that these impacts would result even if the operations were conducted in full compliance with all the environmental protection performance standards of Sections 515 and 516 of SMCRA and the Secretary's regulations. They go on to provide a summary of the findings made by the Kentucky Division of Surface Mining Reclamation and Enforcement which showed major sediment loading to Cannon Creek Lake, which is the public water supply lake for Pineville, Kentucky.

OSM recognizes the findings and the decision made by the Commonwealth of Kentucky to designate the watershed to the Cannon Creek lake as unsuitable for surface coal mining activities. OSM's findings do acknowledge that there are similarities between the petition areas; however, OSM also recognizes that each watershed has physical and ecological differences that need to be considered distinctly from each other. In conclusion, I have determined that the decision regarding the Cannon Creek Lake petition area is not precedent setting with regards to the Fern Lake petition area.

Based upon: (1) The effects of the increase in sedimentation and water chemistry from mining, including adverse effects on the blackside dace; (2) the value of Little Yellow Creek as important habitat for the blackside dace; and (3) the short to medium term adverse impact on the visual quality of the views from the Cumberland Gap National Historic Park, I have determined that surface coal mining operations in the petition area will affect fragile lands resulting in damage to important estetic values and natural systems.

B. Allegation No. 2 is that surface coal mining operations would affect land by causing a substantial loss or reduction in the long-range availability of water supplies.

The petitioners have alleged that surface mining could result in an increased sediment yield of as much as 2000 times that of baseline conditions during mining and 10–100 times that of baseline conditions after reclamation, and that such sedimentation would decrease the storage capacity and useful life of the lake. OSM's analysis determined that although some sediment loading would occur as a result of mining activities, there would not be any major impact to the storage capacity of Fern Lake nor would it dramatically alter the useful life of the lake from a water quantity standpoint.

The petitioners alleged that surface mining could also alter the physical and chemical properties of the water stored in the lake, resulting in diminution of water quality and potentially increasing water treatment costs. Based on available information, OSM's findings support this allegation. Surface coal mining and reclamation operations conducted within the Fern Lake watershed would significantly impair the water quality of Fern Lake by altering both the physical and chemical characteristics of the water. If surface coal mining operations occurred, chemical changes to the water are predicted to last several hundred years. [PED/EIS: page V–5]

The PED/EIS concluded that these effects would result in increased treatment costs to the City of Middlesborough to meet domestic water supply standards for the water supplied to its users. A sustained increase in turbidity of Fern Lake waters would require the city's treatment plant to operate longer hours and/or to modify equipment to process high turbidity water. The increase in water sediments would increase costs because it would require more frequent equipment cleaning and disposal of more sediment. In addition, the plant would have to add chemicals and/or other processing equipment to reduce the increased concentrations of metals and trace elements in the water from Fern Lake such as fluoride, lead, mercury, selenium, and sulfate. The use of additional chemicals and/or installation of processing equipment would be necessary to meet domestic water supply standards. The existing plant was not designed to treat water with elevated levels of sulfates, sediments, and turbidity. [PED/EIS: page V–11–13]

The significant changes to the water quality of Fern Lake would require the city to make appropriate changes to the existing water treatment system to maintain current water quality. These changes are predicted to be costly to Middlesborough, with no guarantee that the existing water quality could be maintained. Furthermore, no other domestic water supply of the same quality was identified which it would be economically feasible for the city to utilize.

The PED/EIS also concluded that underground mining, from outside the petition area, would cause a major alteration of the water quality or treatment costs of water in Fern Lake.

According to the petitioners, surface coal mining operations could affect aquifers and recharge areas for the watershed, thus affecting the overall hydrology and water availability to the City of Middlesborough. The PED/EIS concluded that the Fern Lake watershed is a renewable resource land and that surface coal mining could result in a substantial loss and reduction in the long-range availability of water supplies for the community of Middlesborough. In evaluating the allegation, I was especially concerned with the predicted impact of mining in the petition area on the water supply for Middlesborough.

Based on OSM's findings, I have determined that changes in sediment loading and water chemistry as a result of surface coal mining operations will affect both aquatic life and drinking water supplies. For the long term, the resource lands subject to the petition would no longer produce a water supply that existing facilities and budget could treat, as discussed above. Therefore, I conclude that surface mining operations on these lands would substantially reduce the long-range productivity of the community's water supply.

C. Allegation No. 3 is that surface coal mining operations would be incompatible with existing local land use plans or programs, specifically those associated with the Cumberland Gap National Historical Park.

The Cumberland Gap National Historical Park Master Plan (National Park Service, 1978) states that ''according to law, the purpose of the Cumberland Gap National Historical Park is to preserve * * * natural features for the benefit and inspiration of the people.'' Based on this objective, the stated goals of the master plan include the securing of a ''land base through acquisition or other means that is adequate to preserve the park's natural * * * resources and to provide for visitor use and enjoyment.''

The petition area is visible from the Pinnacle Overlook, one of the most popular destinations in the park, and was judged to offer greater esthetic qualities than any of the other viewsheds visible from the Overlook. I have concluded that based on the stated overall objective and purpose of the park, esthetic impacts associated with surface coal mining operations in the

petition area would be short to medium term, but would nevertheless be considered incompatible with the goals of the master plan which are to preserve the park's natural resources and minimize adverse effects on these resources and visitation because of strip mining (see previous discussion on page 7).

D. Allegation No. 4 is that surface coal mining operations should not be allowed because the watershed, due to frequent flooding, constitutes a natural hazard land.

The petitioners have alleged that any additional mining would increase surface water runoff and increase sediment loading and flooding to downstream areas in the Cumberland Gap National Historical Park and the City of Middlesborough. They support this by making a statement that, without any major surface disturbances within the watershed, there is still evidence of current sediment loading from the headwaters (identified as logging roads) which are depositing sediment in the stream channel of Little Yellow Creek.

With regard to Allegation No. 4, OSM's findings in the PED/EIS demonstrated that mining in the petition area would not substantially affect the flooding potential in the Yellow Creek basin and that the Fern Lake watershed does not constitute a natural hazard land. Mining in the watershed would constitute a minor change in the overall land use, which, when coupled with the storage capacity of the required sediment basins, should not significantly alter surface water runoff to the Little Yellow Creek watershed. As a result, I have determined that the area does not constitute a natural hazard land and that mining would not significantly alter the flooding potential of the area.

VIII. Conclusion

I find that surface coal mining operations in the petition area would affect the renewable resource lands in that area and result in a substantial loss in long-range productivity of Fern Lake, which serves as the Middlesborough public water supply. Surface mining would alter the physical and chemical properties of the water stored in the lake. Changes in sediment loading and water chemistry could degrade the water quality of the lake so as to be a major burden on the city's water treatment plant. Mining in the petition area would cause this loss in productivity even if conducted in full compliance with the environmental performance standards of SMCRA.

In addition, I find that surface coal mining operations in the petition area would affect fragile lands resulting in damage to important esthetic values and natural systems and would be incompatible with the goals of the master plan for the Cumberland Gap National Historical Park. I considered these findings in my decision on the petition, but the most important consideration was the impact of surface coal mining operations in the petition area on productivity of the Fern Lake water supply.

I find that alternative No. 1, designating the entire petition area as unsuitable for surface coal mining operations but allowing underground mining from outside the petition area, will best prevent the harms discussed in this decision. The other designation alternatives would not effectively address the adverse effects identified in Section V of the PED/EIS.

IX. Future Action

OSM is responsible for approving or denying applications for proposed surface coal mining operations in the Fern Lake petition area. Under this decision, OSM would not receive and process applications for proposed surface coal mining operations on any coal seam within the Fern Lake petition area. However, if a petitioner provides information to terminate this designation, the petition would require new allegations of fact that would support such a termination.

X. Notification

Pursuant to 30 CFR 942.764.19, this ''Statement of Reasons'' is being sent simultaneously by certified mail to the petitioners and by regular mail to every other party to the petition process. My decision becomes final upon the date of signing this statement. Any appeal from this decision must be filed within 60 days from this date in the Untied States District Court for the Eastern District of Tennessee, as required by Section 526(a)(1) of SMCRA.

Dated: September 13, 1996.

Robert J. Uram,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 96–24262 Filed 9–20–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP No. 1100]

RIN 1121–ZA49

Solicitation for Corrections Technical Assistance and Conference Series

AGENCY: Office of Justice Programs, Corrections Program Office, Justice.

ACTION: Notice of solicitation of applications.

SUMMARY: The Corrections Program Office is soliciting proposals to establish a Corrections Technical Assistance and Conference Series. The purpose of the series is to provide training and technical assistance to State and local jurisdictions to support the effective implementation of corrections-related grant programs authorized by the Violent Crime Control and Law Enforcement Act of 1994, as amended.

DATES: Applications are due to the Corrections Program Office no later than close of business on October 25, 1996.

ADDRESSES: Corrections Program Office, 633 Indiana Avenue, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Patricia Malak, Corrections Program Office, at (800) 848–6325 or (202) 305–4866 if calling from Metropolitan Washington, DC. Applications for this solicitation may be obtain through this number.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Violent Crime Control and Law Enforcement Act of 1994, as amended, 42 U.S.C 13701–9 and 42 U.S.C. 13911, and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3796ff-3796ff-4.

Background

The Corrections Program Office is responsible for administration of the following corrections-related grant programs authorized by the Violent Crime Control and Law Enforcement Act of 1994, as amended:

- Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grants
- Discretionary Grants to Build Jail Facilities on Tribal Lands
- Residential Substance Abuse Treatment for State Prisoners
- Prevention, Diagnosis, and Treatment of Tuberculosis in Correctional Institutions

The solicitation describes these programs, outlines the scope of work

and tasks to be performed, describes the administrative and application requirements, and provides the forms needed to prepare an application. One award for up to $1.8 million will be issued as a cooperative agreement. The duration will be one year, with supplemental awards made annually for up to 5 years, based on the recipients performance, program needs, and the availability of funds. The recipient will be expected to work in close partnership with Corrections Program Office and other Department of Justice personnel to define and address the needs for assistance by State and local jurisdictions.

Dated: September 19, 1996.

Larry Meachum,

Director, Corrections Program Office.

[FR Doc. 96–24325 Filed 9–20–96; 8:45 am]

BILLING CODE 4410–18–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–7 CARP CD 93–94]

Ascertainment of Controversy for 1993 and 1994 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected for secondary transmission by cable systems in 1993 and 1994 to submit comments as to whether a Phase I or a Phase II controversy exists as to the distribution of these funds. The Office also requests comments as to whether it should consolidate the distribution of the 1993 cable royalties with the distribution of the 1994 cable royalties.

DATES: Comments are due November 1, 1996.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand-delivered, an original and five copies of written comments and a Notice of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, or Tanya M. Sandros, CARP Specialist, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Each year, cable systems submit royalties to the U.S. Copyright Office for a statutory license to retransmit broadcast signals to their subscribers. 17 U.S.C. 111. These royalties are, in turn, distributed to the copyright owners by means of an ad hoc Copyright Arbitration Royalty Panel (CARP) administered by the Librarian of Congress and the Copyright Office.

Before commencing a distribution proceeding, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the funds. 17 U.S.C. 803(c). Therefore, the Copyright Office is requesting comment on the existence of controversies as to the distribution of 1993 and 1994 cable royalties. Additionally, the Office seeks comment on whether to consolidate the proceedings for distributing the 1993 cable royalties with the proceeding for distributing the 1994 cable royalties.

Finally, the Office requests that those claimants intending to participate in the 1993, 1994, or a consolidated distribution proceeding file a Notice of Intent to Participate, noting whether participation will be for 1993, 1994 or both; and the level of participation for each year, i.e. Phase I, Phase II, or both. Specifically for Phase II, each claimant must state each program category in which he or she has an interest which by the end of the comment period has not yet been satisfied by private agreement.

Participants must advise the Office of any particular controversy, Phase I or Phase II, by the end of the comment period. The Office will not consider controversies which come to its attention after the close of the comment period.

Dated: September 17, 1996.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 96–24289 Filed 9–20–96; 8:45 am]

BILLING CODE 1410–33–P

[Docket No. 95–1 CARP DD 92–94]

Distribution of DART Royalty Funds for 1992, 1993, and 1994

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of prehearing conference.

SUMMARY: The Library of Congress issues this notice to inform the public that the Copyright Arbitration Royalty Panel (CARP) which shall determine the distribution of the 1992, 1993, and 1994 digital audio recording technology (DART) royalties in the Musical Works Funds has scheduled a prehearing conference with the participants to the proceeding. At this meeting, the participants shall consider proposals for paying the panel for their services and establish a schedule for the hearings.

EFFECTIVE DATE: The prehearing conference will be held on Friday, October 4, 1996, beginning at 10:00 a.m., in the CARP hearing room, Room LM–414, located on the fourth floor of the Library of Congress, James Madison Building, First Street and Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, CARP Specialist, Copyright Arbitration Royalty Panel, P.O.Box 70977, Southwest Station, Washington, D.C. 20024.

SUPPLEMENTARY INFORMATION: The Audio Home Recording Act (AHRA) requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. Each year, interested copyright parties file claims with the Copyright Office during January and February for royalties collected the preceding calendar year under chapter 10 of the Copyright Act, 17 U.S.C. Subsequently, these funds are distributed to the claimants in two ways; either the claimants negotiate a settlement for a share of the royalties, or the Librarian of Congress convenes a CARP to determine the distribution of the funds.

On August 8, 1996, the Librarian of Congress initiated the 180-day arbitration period for the distribution of the 1992–1994 DART royalties. 61 FR 39670 (July 30, 1996). The regulations governing the administration of the Copyright Arbitration Royalty Panels requires that all meetings of the panels be open to the public, and that the schedule for the proceeding shall be published in the Federal Register at least seven calendar days in advance of the first meeting. 37 CFR 251.11(a)(b). This notice announces the time, date, and place of the first meeting. The arbitrators, however, have not set the schedule for the presentation of the parties' cases at this time. Therefore, the Library will publish the original schedule for this proceeding as soon as it becomes available, as required by 37 CFR 251.11(b). Any changes to the original schedule will be announced in open meeting and issued as orders to the parties participating in the proceeding.

Dated: September 17, 1996.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 96–24290 Filed 9–20–96; 8:45 am]

BILLING CODE 1410–33–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Northern States Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60, issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota.

The proposed amendments would allow the use of credit for soluble boron in spent fuel pool criticality analyses and the relocation of the spent fuel pool operating limits to the Core Operating Limits Report. Prairie Island is requesting these license amendments as a lead plant for the Westinghouse Owners Group.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 23, 1996, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated July 28, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street,

NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this day of September.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–24274 Filed 9–20–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Certifications Contained in Procurement Rules

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: Section 4301 of the Federal Acquisition Streamlining Act, Pub. L. 104–106, provides for the review, and removal, after appropriate determinations are made, of non-statutory certifications contained in agency procurement rules. Upon review, the Director of OMB has determined that the regulations of the Cost Accounting Standards (CAS) Board include such non-statutory certifications. Accordingly, the Director has referred the matter to the CAS Board for an appropriate determination and regulatory action, if necessary, pursuant to the Board's rulemaking authorities conferred under 41 U.S.C. 422. The CAS Board will review those non-statutory certifications contained in its rules in order to determine whether such certifications should be removed or amended.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

Franklin D. Raines,

Director, Office of Management and Budget.

[FR Doc. 96–24300 Filed 9–20–96; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Officer of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given that the fiftieth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: October 4, 1996, at 10:00 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–24157 Filed 9–20–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37686; File No. SR–OPRA–96–3]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment To Approve on a Permanent Basis OPRA's Current Usage-Based Fee Pilot

September 16, 1996.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act''), notice is hereby given that on August 29, 1996, the Options Price Reporting Authority (''OPRA'') [1] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotations Information (''Plan''). The amendment makes permanent the usage-based fees that apply to OPRA's basic service. OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(i) under the Exchange Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to make permanent the usage-based fees that currently apply to OPRA's basic service on a pilot basis. The current pilot provides for a usage-based fee as an alternative to the port-based Dial-up Market Data Service Utilization Fee, the port-based Voice Synthesized Market Data Service Fee and the device-based Radio Paging Service Fee. The pilot became effective with respect to the Dial-up Market Data Service Utilization Fee in September 1994,[2] and was expanded to include the other two fees in October 1995.[3]

OPRA now proposes to continue all three usage-based fees on a permanent basis, at the same level ($0.02 per ''quote packet'') that has applied during the pilot.[4] Based on its experience with these fees during the pilot, OPRA has concluded that offering usage-based fees to providers of dial-up computer based services, voice-synthesized services, and radio paging services is an appropriate response to those service providers who prefer to pay for access to options market information on the basis of the number of requests that are made for such information.[5] Additionally, according to OPRA, the pilot has demonstrated that the availability of these alternative fees has not had any significant negative impact on OPRA's overall revenues or on the fair allocation of OPRA's basic service fees to persons who have access to options market information.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the five member exchanges. The five member exchanges that agreed to the OPRA Plan are the American Stock Exchange (''Amex''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Stock Exchange (''PSE''); and the Philadelphia Stock Exchange (''Phlx'').

[2] See Securities Exchange Act Release No. 34850 (October 18, 1994), 59 FR 53689 (October 25, 1994).

[3] Securities Exchange Act Release No. 36402 (October 20, 1995), 60 FR 54905 (October 26, 1995). The pilot is scheduled to expire on December 31, 1996. *Id.*

[4] In a separate filing (SR–OPRA–96–4) made concurrently with this filing, OPRA also is proposing to make permanent the pilot in usage-based fees applicable to its foreign currency options service.

[5] As has been the case under the pilot, persons who elect to pay these usage-based fees will be required to give at least 90 days written notice to OPRA before they may convert back to the port-based or device-based fees for these services.

summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–96–3 and should be submitted by October 18, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–24250 Filed 9–20–96; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(29).

[Release No. 34–37687; International Series No. 1019; File No. SR–OPRA–96–4]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to Approve on a Permanent Basis OPRA's Current Usage-Based Fee Pilot

September 16, 1996.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act''), notice is hereby given that on August 29, 1996, the Options Price Reporting Authority (''OPRA'') [1] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotations Information (''Plan''). The amendment makes permanent the usage-based fees that apply to OPRA's foreign currency option (''FCO'') service. OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(i) under the Exchange Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose to the amendment is to make permanent the usage-based fees that currently apply to OPRA's FCO service on a pilot basis. The current pilot provides for a usage-based fee as an alternative to the port-based Dial-up Market Data Service Utilization Fee and the port-based Voice Synthesized Market Data Service Fee. The pilot became effective in October 1995.[2]

OPRA now proposes to continue these usage-based fees on a permanent basis, at the same level ($0.005 per ''quote packet'') that has applied during the pilot.[3] Based on its experience with these fees during the pilot, OPRA has concluded that offering usage-based fees to providers of dial-up computer based services and voice-synthesized services is an appropriate response to those service providers who prefer to pay for access to options market information on the basis of the number of requests that are made for such information.[4] Additionally, according to OPRA, the pilot has demonstrated that the availability of these alternative fees has not had any significant negative impact on OPRA's overall revenues or on the fair allocation of OPRA's FCO service fees to persons who have access to options market information.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549., Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–96–4 and should be submitted by October 18, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–24251 Filed 9–20–96; 8:45 am]

BILLING CODE 8010–01–M

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities and Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the five member exchanges. The five member exchanges that agreed to the OPRA Plan are the American Stock Exchange (''Amex''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Stock Exchange (''PSE''); and the Philadelphia Stock Exchange (''Phlx'').

[2] Securities and Exchange Act Release No. 36450 (November 1, 1995), 60 FR 56380 (November 8, 1995). The pilot is scheduled to expire on December 31, 1996. *Id.*

[3] In a separate filing (SR–OPRA–96–3) made concurrently with this filing, OPRA also is proposing to make permanent the pilot in usage-based fees applicable to its basic service.

[4] As has been the case under the pilot, persons who elect to pay these usage-based fees will be required to give at least 90 days written notice to OPRA before they may convert back to the port-based fees for these services.

[5] 17 CFR 200.30–3(a)(29).

[Release No. 34–37690; File No. SR–CHX–96–11]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Examinations

September 17, 1996.

I. Introduction

On March 6, 1996, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change, on March 18, 1996, filed Amendment No. 1 to the proposed rule change,[3] and on April 4, 1996, filed Amendment No. 2 to the proposed rule change,[4] to amend Rules 2 and 3 of Article VI (and the interpretations and policies thereunder) to clarify existing rules, adopt a new Floor Membership Exam, adopt a new Market Maker Exam, adopt a new Co-Specialist Exam, and adopt examinations applicable to persons conducting a customer business from the CHX trading floor. The Exchange also proposed to adopt the Content Outline for the Examination Module for Floor Members Engaged in a Public Business with Professional Customers and the Content Outline for the Examination Module for Floor Clerks of Members engaged in a Public Business with Professional Customers (collectively, the ''Content Outlines'').[5] The proposed rule change, Amendment No. 1, and Amendment No. 2 were published for comment in Securities Exchange Act Release No. 37067 (April 4, 1996), 61 FR 16274 (April 12, 1996). One comment was received on the proposal.[6] On June 3, 1996, in response to Comment Letter No. 1, the Exchange submitted to the Commission Amendment No. 3 to the proposed rule change.[7] Amendment No. 3 clarifies the proposed amendments to Rule 2 of Article VI. Amendment No. 3 was published for comment in Securities Exchange Act Release No. 37324 (June 18, 1996), 61 FR 32872 (June 25, 1996). One comment was received on the proposal.[8] The CHX submitted a response letter supporting its proposal and responding to Comment Letter No. 2.[9] For the reasons discussed below, the Commission has decided to approve the CHX's proposal.

II. Description of the Proposals

CHX Rule 3, Article VI authorizes the Exchange to require the successful completion of an examination in connection with the registration of partners, officers, options principals, branch office managers and registered representatives of member firms and member corporations. Pursuant to this Rule, in 1987 the Commission approved the use of the General Securities Registered Representative Examination (''Series 7 Exam'') by the CHX to qualify persons seeking registration as general securities representatives. The purpose of the proposed rule change is to: (1) Adopt the requirement that members located on the floor of the CHX who wish to accept orders directly from the public must take and pass the Series 7 Exam; (2) allow members located on the floor of the CHX to accept orders directly from professional customers [10] for execution on the trading floor without taking the Series 7 Exam so long as they take and pass the Series 7A Exam; (3) allow floor clerks/floor employees to accept orders from professional customers in support of members or member organizations previously approved to conduct a public business so long as they take and pass the Series 7B Exam; [11] (4) codify the existing requirement that all potential floor members successfully complete a ''Floor Membership Exam''; (5) codify the existing requirement that all potential market makers successfully complete a ''Market Maker Exam'' in addition to the Floor Membership Exam; and (6) codify the existing requirement that all potential co-specialists successfully complete a ''Co-Specialist'' Exam in addition to the Floor Membership Exam.

The proposed rule change also clarifies current Exchange requirements for registering personnel and makes technical changes to the registration procedure. The proposed rule change adds a definition of ''control person'' to Article VI, Rule 2 and specifies that all such persons at members and member organizations must be acceptable to the Exchange. A ''control person'' is defined as:

> [A] person with the power, directly or indirectly, to direct the management or policies of a company whether through ownership of securities, by contract or otherwise, and at a minimum, means all directors, general partners or officers exercising executive responsibility (or having similar status or functions), all persons directly or indirectly having the right to vote 5% or more of a class of a voting security or having the power to sell or direct the sale of 5% or more of a class of voting securities, or in the case of a partnership, having the right to receive upon dissolution, as having contributed, 5% or more of the capital.[12]

Additionally, the proposed change clarifies that nominees of member firms must be registered with the Exchange.

Rule 2 of Article VI requires members of member organizations that know or in

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from David T. Rusoff, Foley & Lardner, to Elisa Metzger, SEC dated March 14, 1996 (''Amendment No. 1'').

[4] See Letter from Charles R. Haywood, Foley & Lardner, to Elisa Metzger, SEC dated April 4, 1996 (''Amendment No. 2'').

[5] The Exchange will use the Series 7A Examination and the respective Content Outline that was approved in Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (File No. SR–NYSE–93–10). The Exchange will use the Series 7B Examination and the Respective Content Outline that was approved in Securities Exchange Act Release No. 34334 (July 8, 1994) 59 FR 35964 (File No. SR–NYSE–94–13). The Series 7A and 7B Examinations for CHX members will be administered by the National Association of Securities Dealers, Inc. (''NASD'').

[6] See Letter from C. Philip Curley, Robinson Curley & Clayton, P.C., to Jonathan G. Katz, Secretary, SEC dated May 2, 1996 (''Comment Letter No. 1'').

[7] See Letter from David Rusoff, Foley & Lardner, to Elisa Metzger, SEC dated May 31, 1996 (''Amendment No. 3'').

[8] See Letter from C. Philip Curley, Robinson Curley & Clayton, P.C., to Jonathan G. Katz, Secretary, SEC dated July 15, 1996 (''Comment Letter No. 2'').

[9] See Letter from David Rusoff, Foley & Lardner, to Elisa Metzger, SEC dated July 24, 1996.

[10] The proposal defines a professional customer to include: A bank; trust company; insurance company; investment trust; state or political subdivision thereof; charitable or nonprofit educational institution regulated under the laws of the United States or any state or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or a political subdivision thereof; or any person who has, or has under management, net tangible assets of at least sixteen million dollars. As used in this definition, the term ''person'' would not include natural persons.

[11] To minimize any burden imposed by the Series 7, Series 7A and Series 7B exam requirements, the Exchange will phase-in these new requirements over a designated period of time after the proposed rule change has been approved. This will provide persons subject to the exam with an opportunity to study for and take the new examination without unnecessary business disruptions. The phase-in period is as follows: Members who were not required to successfully complete the Series 7 or Series 7A exam prior to approval of this rule change and floor clerks/floor employees subject to the Series 7B exam will have 180 days from the effective date of this proposed rule change to take the appropriate exam. In the event the member or floor clerk/floor employee fails such examination, such member or floor clerk/floor employee must, nonetheless, successfully complete such examination within 270 days from the effective date of this proposed rule change.

[12] In the original filing, the proposed amendment required that all control persons and certain shareholders be acceptable to the Exchange. Amendment No. 3 deleted the reference to ''certain shareholders'' and amended the definition of ''control person'' to include those persons who directly or indirectly have the right to vote or sell 5% or more of a class of voting security, as opposed to 10% or more of a class of voting security. Amendment No. 3 also clarified that in the case of a partnership, a ''control person'' would include those persons who have the right to receive upon dissolution, as having contributed 5%, as opposed to 10%, or more of the capital.

the exercise of reasonable care should know that any prospective employee is subject to one or more statutory disqualifications to submit details on such prospective employee to the Exchange and receive Exchange approval before such person becomes associated with the member or member organization. Rule 2 also requires that each member or member organization take reasonable care to determine the existence of a statutory disqualification prior to employing any prospective employee. Further, if any person already employed by a member or member organization thereafter becomes subject to a statutory disqualification, notice must be sent to the Exchange promptly. Amendment No. 3 clarifies that these provisions are applicable to control persons as well as employees of members or member organizations.

Rule 2 of Article VI states that ''[e]very other employee of a member or member organization must also be acceptable to the Exchange.'' Amendment No. 3 explains the application of the standard ''acceptable to the Exchange'' to control persons. In the proposed rule change, the Exchange states that the ''acceptable to the Exchange'' standard will apply to control persons in the same manner as it has applied that standard to employees of members or member organizations in the past since the rule was first adopted.[13] The filing also makes technical changes to Rule 2 of Article VI. In this regard, the filing changes the term ''Form B/D'' to ''Form BD,'' changes ''Schedule D'' to Schedule DRP,'' and changes ''Series VII'' to ''Series 7'' to conform to recent changes in the names of those forms. In addition, the filing changes the term ''exchange'' to ''self-regulatory organization'' in order to include within the language of the rule self-regulatory organizations that do not meet the statutory definition of ''exchange,'' such as the National Association of Securities Dealers.[14] The filing moves Interpretation and Policy .01, .02, and .03 from Rule 3 of Article VI to Rule 2 of that Article[15] and moves the location of a portion of Interpretation and Policy .02(b) of Rule 2 relating to options to another location in the same interpretation. The proposed rule change revises Interpretation and Policy .01 (2) of Rule 2, Article VI to delete the requirement that a Notice of Acceptance of Registration Form from the NASD be submitted to the Exchange because this form no longer exists. The proposed rule change also deletes Interpretation and Policy .01(3) of Rule 2, Article VI because revised Interpretation and Policy .01 gives the Exchange the authority to permit firms to submit revised forms directly to any SRO. Thus, the carve-out for NYSE member firms provided for in this interpretation is no longer needed.[16]

The proposed rule change also revises Rule 2 of Article VI, Interpretation and Policy .01 to clarify the procedures to be followed when registering persons with the Exchange. Specifically, a member firm that registers persons with the Exchange must submit, among other things, a completed Form U–4 for such individual to the Exchange (or to another SRO designated by the Exchange). The member firm must also submit an amended Form BD for the firm if the individual's registration requires the Form BD to be amended. Additionally, the member firm must update its Form BD and Form U–4s whenever information on those Forms becomes inaccurate or incomplete.

Finally, the filing proposes to amend Rule 3 of Article VI to clarify that the examinations and training courses required by the rule apply to individual members as well as persons at member firms and member organizations.

III. Summary of Comments

The Commission received two comment letters regarding the amendments to Article VI, Rule 2, regarding the registration requirements for personnel. As stated above, in the original filing, the proposed amendment to Article VI, Rule 2, would have required that ''Every other employee of, any control person, and certain shareholders of, a member or member organization must also be acceptable to the Exchange.'' In Comment Letter No. 1, the commenter stated that the term ''certain shareholders'' was not defined. In addition, the commeter stated that the phrase ''acceptable to the Exchange'' was too vague a standard. In response, the CHX amended the original filing and deleted the term ''certain shareholders.'' In the amended filing, the CHX provided examples of circumstances in which an individual would not meet the ''acceptable to the Exchange'' requirement.[17]

In comment Letter No. 2, the commenter re-asserted its comment that the ''acceptable to the Exchange'' language is too vague. In response to Comment Letter No. 2, the CHX claims that Comment Letter No. 2 restates some of the same concerns that were raised in Comment Letter No. 1 and that the CHX believes it fully addressed those comments in the amended filing.

Dissussion

After careful consideration of the comments and the CHX response thereto, the Commission has determined to approve the proposed rule change. For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act.[18] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remover impediments to and perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. Section (6)(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the proposed rule changes are consistent with Section 15(b)(7) of the Act,[19] which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer (and all natural persons associated with such broker or dealer)

[13] While the Exchange has not had to apply this standard in recent years, the Exchange might apply it if, for example, a prospective employee or control person is subject to a statutory disqualification or if the person, while not subject to a statutory disqualification, is barred from the banking industry because he or she stole from customers. See supra note 7.

[14] The term ''self-regulatory organization'' is to have the statutory meaning. See Amendment No. 2.

[15] In Interpretation and Policy .02, the change from ''would be'' to ''are'' is a stylistic change intended to make no substantive alteration in the rule. See Amendment No. 2.

[16] In the original filing, the proposed amendments to Rule 2 of Article VI stated that upon notice to a member or member organization that the President of the Exchange has withheld or withdrawn approval of the employment of any other person, the relationship between the member or member organization and such person shall be terminated. Amendment No. 3 deletes the reference to ''the employment of'' any such other person.

[17] See supra note 13.

[18] 15 U.S.C. 78f(b)(5) and (c)(3)(B).

[19] 15 U.S.C. 78o(b)(7).

must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

Series 7, Series 7A, and Series 7B Exams

The proposed interpretation and policy to Rule 3 of Article VI will clarify and put all persons on notice that any person who conducts a public business is required to be registered and qualified as a registered representative. Such registration would require, among other things, that a person complete the Series 7 Exam, as described in Interpretation and Policy .01(d) to Rule 3 of Article VI. Likewise, the proposed interpretation and policy will put all persons on notice that any person who accepts orders directly from professional customers for execution on the trading floor is required to complete a Series 7A Exam or Series 7B Exam.

The Commission believes that the Series 7A Exam and Series 7B Exam requirements should help to ensure that only those floor members and floor clerks/floor employees with a comprehensive knowledge of Exchange rules, as well as an understanding of the Act, will be able to conduct a public business limited to accepting orders directly from professional customers for execution on the trading floor. The Commission has determined that the Content Outlines for the Series 7A Exam and the Series 7B Exam are sufficiently detailed and cover the appropriate information so as to provide an adequate basis for studying the topics covered on the Exam.[20] These outlines should help to ensure that those persons taking the Series 7A Exam or Series 7B Exam fully understand the subject matter of those exams.

The Commission has determined that the proposed limited registration requirements for floor members and floor clerks/floor employees who accept orders from professional customers is reasonable and is consistent with the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act. These new categories of registration would permit only those floor members and floor clerks/floor employees who have demonstrated adequate skills and knowledge to conduct a public business which is generally limited to accepting orders directly from professional customers, as defined in the interpretation and policy,[21] for execution on the trading floor. The CHX has argued that the level of knowledge, skills and abilities necessary to conduct such business is less than that needed to conduct a full service business with retail customers. The Commission believes that, because the CHX will ensure that floor members handling professional customer business are adequately qualified through the use of either the Series 7 Exam, Series 7A Exam, or Series 7B Exam, it is consistent with the CHX's regulatory responsibilities to establish this category of limited registration.

General Membership, Market Maker, and Co-specialist Exams

The Commission believes that codification of the existing requirements that all: (1) Potential floor members successfully complete the Floor Membership Exam; (2) potential market makers successfully complete the Market Maker Exam in addition to the Floor Membership Exam; and (3) co-specialists successfully complete the Co-specialist Exam, will clarify and put all such persons on notice of such requirements. In addition, the Commission believes that these exams will help to ensure that only those members with basic trading knowledge and ability will have a floor presence. Similarly, the Market Maker Exam and the Co-specialist Exam should help to ensure that only those members that have an understanding of market makers' and co-specialists' duties and obligations will be permitted to conduct such functions.

Registration of Personnel

The Commission has determined that the proposal that nominees of member firms must be registered with the Exchange is consistent with Section 6(c)(3)(B) of the Act, which permits a national securities exchange to examine and verify the qualifications of an applicant to become a person associated with a member, and require any such person to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the requirement that any ''control person'' must be acceptable to the Exchange is consistent with Section 15(b)(7) of the Act[22] which stipulates that all natural persons associated with a registered broker or dealer must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. While Comment Letters No. 1 and 2, assert that this is too vague a standard, all employees of members or member organizations currently are subject to this standard. Amendment No. 3 would hold control persons to the same standard as other employees. Further in Amendment No. 3, the Exchange described the parameters of this standard. For example, the Exchange would find a person unacceptable if such person was barred from the banking industry because he or she stole from customers. The Commission has determined that the Exchange has adequately addressed the commenter's criticism of this provision.

The proposal also requires that a member or member organization must take reasonable care to determine the existence of a statutory disqualification of any prospective control person, report any such statutory disqualifications of prospective control persons to the Exchange, submit details on the statutory disqualification of the prospective control person to the Exchange, and receive Exchange approval before such person becomes associated with the member or member organization. Further, if any control person already employed by a member or member organization becomes subject to a statutory disqualification, notice must be sent to the Exchange promptly. The Commission believes this is consistent with Section 6(c)(3)(B) of the Act in that the CHX is verifying the qualifications of a person associated with a member or member organization.

The Commission has determined that the technical changes to Rules 2 and 3 of Article VI are consistent with the requirements of Section 6(b)(5) of the Act in that such changes merely update the rules to conform to current industry practice. For example, the filing changes the term ''Form B/D'' to ''Form BD,'' and changes ''Schedule D'' to ''Schedule DRP'' to conform to recent changes in the names of those forms.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CHX–96–11), including Amendments No. 1, 2, and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–24299 Filed 9–20–96; 8:45 am]

BILLING CODE 8010–01–M

[20] See supra note 5.

[21] See supra note 10.

[22] 15 U.S.C. 78o(b)(7).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[Release No 34–37679; File No. SR–NSCC–96–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Substitution of Officer Titles

September 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 29, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise NSCC's by-laws and rules to replace the titles of ''First Vice President,'' ''Senior Vice President,'' and ''Executive Vice President'' with the new titles of ''Senior Managing Director'' and ''Managing Director.''[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it receive on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to conform with how NSCC and many firms in the industry operate, NSCC has created new titles, ''Managing Director'' and ''Senior Managing Director,'' in lieu of the titles ''First Vice President,'' ''Senior Vice President,'' and ''Executive Vice President.'' The purpose of this rule change is to modify NSCC's rules and by-laws to accommodate this change. Article III, Section 3.1 of NSCC's by-laws is being amended to establish the positions of Managing Director and Senior Managing Director as officers of NSCC.[4] Article III, Section 3.4, which sets forth the powers and duties of Executive Vice Presidents, is being amended to replace Executive Vice President with Senior Managing Directors/Managing Directors. Section 3.5, which describes the powers and duties of Vice Presidents, is being revised to establish the Senior Managing Director and Managing Director's precedence over Vice Presidents.[5] Article I, Sections 1.2 and 1.8 of the by-laws are being revised to permit Managing Directors to call special meetings and to serve as presiding officers of meetings.

NSCC's rules and procedures are being amended to authorize officers of certain levels to act in those instances where First Vice Presidents, Senior Vice Presidents, or Executive Vice Presidents were formerly authorized to take certain actions. Specially, Rule 22, Suspension of Rules, is being amended to allow the General Counsel, instead of the Executive Vice President to extend, waive, or suspend time requirements fixed by NSCC's rules. Rules 23, Action by the Corporation, and 33, Procedures, are being revised to replace Executive Vice President with Senior Managing Director and Managing Director. Senior Managing Directors and Managing Directors are now permitted to act for NSCC and to prescribe procedures and regulations upon delegation of authority by the Board.

The proposed rule change is consistent with the requirements of Section 17A of the Act[6] in that it makes technical modifications to NSCC's by-laws and rules so that they coincide with NSCC's new internal management structure.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b-4(e)(3)[8] thereunder in that the proposed rule change is concerned solely with the administration of NSCC. At any time within sixty days after the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying a the principal office of the NSCC. All submissions should refer to File No. SR–NSCC–96–17 and should be submitted by October 15, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–24252 Filed 9–20–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Although the titles of ''First Vice President'' and ''Senior Vice President'' do not appear in NSCC's rules and by-laws, such titles have been used in practice.

[3] The Commission has modified such summaries.

[4] Section 3.1 still permits NSCC to designate a Vice President as Executive Vice President or Senior Vice President.

[5] The position of Vice President will remain.

[6] 15 U.S.C. 78q–1 (1988).

[7] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[8] 17 CFR 240.19b–4(e)(3) (1996).

[Release No. 34–37684; File No. SR–PTC–96–05]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of Proposed Rule Change Relating to Establishing a New Category of PTC Participant

September 16, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 21, 1996, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PTC–96–05) as described in Items I, II, and III below, which Items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Items of Substance of the Proposed Rule Change

The proposed rule change establishes a new category of PTC participant, a ''Federal Reserve participant,'' for Federal Reserve Banks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow PTC to establish a new category of PTC participant, a Federal Reserve participant, in order to enable Federal Reserve Banks to maintain accounts at PTC for the purpose of accepting securities as collateral for discount window advances from the Federal Reserve Banks and for other obligations to Federal Reserve Banks. At a later date, the Federal Reserve Banks may elect to accept securities pledged as collateral to secure Treasury tax and loan accounts[3] or collateral pledged for other purposes which may be requested by a Federal Reserve Bank.

Following approval of this proposed rule change, PTC and the Federal Reserve Bank of New York (''FRBNY'') will commence a pilot program which will be open to a limited number of PTC participants. During the pilot program, FRBNY will permit collateral that it accepts as meeting its requirements to be pledged by pilot participants to secure discount window advances and other direct obligations of such participants to the FRBNY.

During the pilot, PTC also will undertake software changes that may later permit pledges of Treasury tax and loan collateral and pledges of collateral by institutions that are not direct participants themselves but use PTC participants as custodians.[4] The FRBNY will review the performance of the pilot program, and PTC will make appropriate adjustments to assure that the program functions in accordance with the FRBNY's requirements. Other Federal Reserve Banks will participate in the collateral arrangements as agreed between the individual Federal Reserve Bank and PTC.

Background

PTC was established as a depository for mortgage-backed securities to facilitate the prompt and accurate clearance and settlement of transactions in mortgage-backed securities, initially, GNMA securities. Currently, PTC's rules permit participation as either a participant or a limited purpose participant. Participants are entitled to all of PTC's services and system capabilities in accordance with PTC's rules. Limited purpose participants are subject to limitations on the scope of their activity with the principal limitation being the inability to deliver securities versus payment and to incur a transactional debit balance.

Proposed Category of Eligibility

Establishing the Federal Reserve participant as a category of participation will enable Federal Reserve Banks to participate in PTC in a capacity different from that of participants or limited purpose participants.[5] The new category of participant will allow Federal Reserve Banks to hold securities pledged as collateral for discount window advances and for other purposes specified by a Federal Reserve Bank.

Like limited purpose participants, Federal Reserve participants will be restricted from receiving securities versus payment and incurring a debit balance, In addition, Federal Reserve participants will not receive principal and interest (''P&I'') advances on securities held at PTC and therefore are not required to repay third-party loans obtained for this purpose.[6]

The proposed rule change also provides that Federal Reserve participants will be exempt from some of the obligations applicable to participants and limited purpose participants consistent with the restricted nature of the Federal Reserve Bank participation.[7] The most significant exemptions applicable to Federal Reserve participants are that they are not required to: (1) indemnify PTC or any licensor or provider of data processing services to PTC; (2) furnish periodic financial reports and open books and records for inspection by PTC; (3) pay fees, fines or assessments; (4) contribute to the participants fund; or (5) submit disputes to arbitration.

The proposed rule change further provides that securities and property of a Federal Reserve participant are not subject to any lien, security interest, or ownership interest by PTC.[8] In addition, PTC is liable to a Federal Reserve participant for losses attributable in the case of a failure to exercise ordinary care or in the case of willful misconduct or fraudulent or criminal acts, and will not waive any of its rules or procedures without a Federal Reserve participant's consent if the effect of such

[1] U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] A financial institution can be designated as a Treasury tax and loan depository to process deposits of Federal taxes and to maintain and administer separate accounts known as Treasury tax and loan accounts. In order to accept these deposits, the financial institution must pledge collateral security to secure Treasury tax and loan balances with the Federal Reserve Bank of the district in which it is located. 31 CFR 202, 203.

[4] Many smaller institutions which cannot meet the high capital requirements established by PTC to be admitted as a participants establish clearing arrangements with PTC participants in order to utilize PTC's services.

[5] The new category of Federal Reserve participant will be governed by a new Section 2A to Rule 1, Article IV of PTC's rules (''Qualifications and Duties of Participants and Limited Purpose Participants'') and by a new form of participation agreement for Federal Reserve participants.

[6] Federal Reserve participants will not receive P&I through PTC because P&I on securities in a pledgee account is paid to the pledgor pursuant to PTC's rules.

[7] These exemptions are set forth in the new Section 2A to Rule 1, Article IV of PTC's rules.

[8] Because securities held by PTC for the account of a Federal Reserve participant are held in pledgee accounts and transferred free into such accounts, this change is merely a restatement of PTC's existing rules, which provide that PTC does not have a lien, security, or ownership interest in securities held and transferred in this manner.

waiver would be to prejudice a Federal Reserve participant's rights.

The special provisions applicable to Federal Reserve participants are consistent with the restricted nature of Federal Reserve Bank participation at PTC which is to hold pledged securities that are transferred free of payment through PTC's system.

Additional Rule Changes

PTC also is making certain technical changes to several sections of its rules to conform them to the present rule change. In particular, PTC is amending its rules to clarify the characterization in its rules that certain transfers of securities into a pledgee account constitute the transfer of a security interest in the subject securities subject to the satisfaction of all requirements of applicable law including, but not limited to, those requirements which are satisfied through PTC. Furthermore, PTC is not responsible for the failure of parties to take the requisite action to comply with the requirements of applicable law for which PTC cannot determine compliance.[9] In addition, PTC is amending its rules to clarify that the approval of the receiving participant is a condition precedent to effecting an account transfer of securities into a pledgee account.[10]

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[11] and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has engaged in discussions and correspondence with the FRBNY in the course of formulating the proposed rule change. The proposed rule change also has been discussed informally with participants at meetings of PTC's Operations Committee, which is comprised of representatives of PTC's participants. Participants have responded favorably to the proposed rule change at such meetings although no written comments from participants have been solicited or received.

Except as described in the preceding paragraph, PTC has not solicited and does not intend to solicit comments on this proposed rule change and has not received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PTC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of PTC. All submissions should refer to the file number SR–PTC–96–05 and should be submitted by October 15, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–24253 Filed 9–20–96; 8:45 am]

BILLING CODE 8010–01–M

[9] PTC rules, Article II, Rule 3, Section 3 and Article II, Rule 16.

[10] PTC rules, Article II, Rule 13, Section 1(b)(iii).

[11] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[12] 17 CFR 200.30–3(a)(12) (1995).

DEPARTMENT OF STATE

[Public Notice No. 2445]

Advisory Committee on International Economic Policy; Notice of Meeting

A meeting of the Advisory Committee on International Economic Policy will be held on September 24 at 9 a.m. in Room 1107 at the Department of State, 2201 C Street, NW. Delay in publication of this notice is due to unforseen scheduling difficulties and is regretted. The meeting will be hosted by Assistant Secretary of State for Economic Affairs Alan Larson. Joan Spero, Under Secretary of State for Economic and Business Affairs will open the meeting and deliver brief remarks. The proposed agenda is:

I. Welcome by Under Secretary Spero
II. Remarks by Assistant Secretary Larson
III. Discussion of corruption in international business transactions
IV. OECD negotiations on the Multilateral Agreement on Investment
V. Discussion of economic sanctions
VI. Regional trade issues

Members of the public may attend these meetings up to the seating capacity of the room. Please contact Ann Alexandrowicz at (202) 647–7727 if you wish to attend.

Dated: September 18, 1996.

Timothy P. Hauser,

Executive Secretary, Advisory Committee on International Economic Policy.

[FR Doc. 96–24389 Filed 9–18–96; 4:50 pm]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 96–096; Notice 01]

Proposed Collection of Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Request for comment on proposed collection of information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and implementing rule 5 CFR Part 1320 by the Office of Management and Budget, the NHTSA invites public comment on proposed collection of information in support of its Evaluation Study of Odometer Tampering in Passenger Cars. NHTSA is initiating a comprehensive study of odometer fraud in accordance with Congressional directive (House Report 103–190 of July 27, 1993). The study will consist of three primary components. The first component will

be the development of first-time national estimates of the incidence rate of odometer fraud and the costs associated with odometer fraud. The second component of the study will be an evaluation of the efforts of the states to combat odometer fraud. This will include an assessment of state compliance with 49 CFR Part 580, ''Odometer Disclosure Requirements,'' which implemented the Truth in Mileage Act (Public Law 99–579). A review and assessment of other efforts undertaken at the state level to counter odometer tampering will also be made. The third component of the odometer fraud evaluation will be an assessment of the various Federal efforts carried out over the last several years to combat odometer and the effects of those efforts. Primarily, this will be a review of NHTSA's investigatory and related odometer enforcement activities. The results of the three-part evaluation study will provide a basis for developing recommendations for the future direction of odometer fraud programs at the Federal and State levels.

DATES: Comments must be received by November 22, 1996.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted to the Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–1574. (For information on OMB processing procedures for the proposed collection of information, contact: Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2589).

SUPPLEMENTARY INFORMATION:

1. Information Collection Request

The agency is seeking comments on the following two information collection proposals:

Type of Collection: New.

Title: (1) Odometer Disclosure Information;

(2) Survey of State Efforts to Deter Odometer Tampering.

Affected Entities: (1) Dealers and distributors of motor vehicles; State motor vehicle departments.

Abstract: The NHTSA, as directed by the Congress (House Report 103–190 of July 27, 1993), is initiating a national study, ''Evaluation of Odometer Fraud in Passenger Cars.'' One component of the study is the development of estimates of the national incidence rate of odometer fraud. For this part of the study, samples of passenger cars will be selected from the national population of registered vehicles and from used car sales records of motor vehicle dealers and distributors (fleet lease agencies, rental companies). For the sampled vehicles, it is proposed to collect identifying information (make, model, year, VIN); odometer reading; and transferor/transferee names. This information is required to be kept by vehicle dealers and distributors under the Federal Regulation on Odometer Disclosure (49 CFR Part 580). The information, together with similar information from national vehicle title files (commercial source) and from state department of motor vehicles offices, will be used for the purpose of determining whether a vehicle's odometer may have been rolled back. Two estimates of the incidence rate of odometer tampering will be developed, one for all registered passenger cars, up to 10 years old, and a second for late model vehicles. The second component of the odometer fraud study will be a survey of the state departments of motor vehicles to assess the states' efforts to combat odometer fraud. A key focus of the survey will be the implementation of the Odometer Disclosure Regulation (49 CFR Part 580). Under this rule, the states are required to implement certain procedures intended to deter odometer fraud, including the printing of vehicle titles by secure printing process, and making mileage disclosure a condition of vehicle titling. The data to be collected will be analyzed to provide information on the changes made in vehicle, titling, including cost changes, and on other efforts instituted to verify the accuracy of odometer readings submitted with title applications. Other information on state efforts to combat odometer fraud will also be collected, such as consumer protection services and odometer fraud investigations made by agencies within the state. The essential purpose of the information is to provide an assessment, from a national perspective, of the process and timeliness of state implementation of the Truth in Mileage Regulation and to assess the effects, including cost impacts, of this and other efforts to deter odometer fraud.

Components 1 and 2 of the odometer fraud study will be conducted for NHTSA by a contractor. For component 1, the incidence rate study, the contractor will develop a statistical sampling approach for selecting the lease fleets, rental companies, and car dealers to be included in the study and for sampling vehicles within selected agencies. The contractor will also develop the format of the specific requests for the vehicle sales information from the vehicle dealers and distributors and for the odometer disclosure information from the states. The contractor will also be responsible for carrying out the state survey, including refinement and administration of the survey questionnaire, follow up efforts to obtain completed questionnaires, and processing of returned questionnaires to obtain survey results.

The NHTSA will develop and publish a final technical report of the odometer fraud evaluation. The report will include the results of components 1 and 2, described above, and a third component (to be conducted by NHTSA) consisting of an assessment of past efforts at the Federal level to combat and deter odometer fraud. The results of the evaluation will provide a basis for developing recommendations for the future direction of odometer fraud programs at the Federal and State levels.

Burden Statement: The effort required by lease fleets, rental companies, and dealers to provide a sample of the vehicle sales records and odometer disclosure information will depend on the form in which these records are kept by the various agencies. CFR Part 580 requires that the records shall be retained ''in an order that is appropriate to business requirements and that permits systematic retrieval.'' For those agencies that maintain automated records, the effort should essentially involve the copying of the specified information on a computer diskette. For agencies whose records may not be electronically maintained, copies of the source documents (odometer disclosure statements) or prepared summaries of the documents would be required. For purposes of burden assessment, it is estimated that 2 hours would be required to respond if records were maintained electronically, and 4 hours if hard copy records were maintained. It should be noted that the number (sample) of records requested will be proportional to the size of the vehicle dealer/distributor, and therefore smaller agencies (who might be less likely to have automated records) would be asked for fewer records than larger agencies. The proposed method of requesting information is via letters from NHTSA, supplemented by telephone contacts.

With respect to burden for the states for the incidence rate component, this will vary depending on the number of vehicle records requested. Also, the number of states contacted may be fewer than 50, depending on the geographic distribution of the sample and the distribution of vehicle matches obtained from use of the national (commercial) title files. It is estimated that the number of records per state will average 150. It is assumed that all states contacted will be able to provide a computer listing of the requested information. The average time to respond to the request is estimated at 3 hours per state. The burden estimate for responding to the state survey questionnaire (component 2) is 3 hours per state. The proposed method of surveying the states is via mail questionnaire, supplemented by telephone contacts.

Collection No.	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours	Cost to respondents
(1)	50 dealers/distrs	1	50	3	150	$2,250
(1)	40 states	1	40	3	120	2,400
(2)	50 states	1	50	3	150	3,000

2. Request for Comments

The agency solicits comments on the proposed information collection to:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, e.g., permitting electronic submission of responses.

3. Submission of Comments

Interested persons are invited to submit comments. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Authority: 44 U. S. C. 3506 (c); delegation of authority at 49 CFR 1.50.

Issued on: September 12, 1996.

William H. Walsh, Jr.,

Acting Associate Administrator for Plans and Policy.

[FR Doc. 96–23944 Filed 9–20–96; 8:45 am]

BILLING CODE 4910–50–P

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Troutman Sanders LLP (Kansas City Southern Railway Company) for permission to use certain data from the Board's 1992 and 1995 Carload Waybill Samples. A copy of the request (WB499—9/13/96) may be obtained from the Office of Economics, Environmental Analysis and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196

Vernon A. Williams,

Secretary.

[FR Doc. 96–24279 Filed 9–20–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; North American Free Trade Agreement (NAFTA) Regulations and Certificate of Origin

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1515–0204 and 1515–0205.

Form Number: Customs Form 434 and 446.

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada; facilitate conditions of fair competition within the free trade area; liberalize significantly conditions for investments within the free trade area; establish effective procedures for the joint administration of the NAFTA; and the resolution of disputes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,155.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 2,694.

Estimated Total Annualized Cost on the Public: $43,100.

REQUEST FOR COMMENTS: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Dated: September 13, 1996.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 96–24344 Filed 9–20–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Reporting Requirements for Vessels, Vehicles, and Individuals

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Reporting Requirements for Vessels, Vehicles, and Individuals. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Vessels, Vehicles, and Individuals.

OMB Number: 1515–0203.

Form Number: N/A.

Abstract: These regulations pertain to the arrival, entry, and departure reporting requirements applicable to vessels, vehicles, and individuals and informs the public regarding applicable penalty, seizure, and forfeiture provisions for violating these requirements.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions and individuals.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 1 minutes.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annualized Cost on the Public: $18,000.

REQUEST FOR COMMENTS: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Dated: September 13, 1996

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 96–24345 Filed 9–20–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Transfer of Cargo to a Container Station

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Transfer of Cargo to a Container Station. . This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Title: Transfer of Cargo to a Container Station.

OMB Number: 1515–0142.

Form Number: N/A.

Abstract: The container station operator may file an application for transfer of a container intact to a container station which is mover from the place of unlading or from a bonded carrier after transportation in-bond before filing of the entry for the purpose of breaking bulk and redelivery.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 360.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1,872.

Estimated Total Annualized Cost on the Public: $18,720.

REQUEST FOR COMMENTS: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Dated: September 13, 1996.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 96–24346 Filed 9–20–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Title: Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.

OMB Number: 1515–0108.

Form Number: N/A.

Abstract: The declaration is used under conditions where articles are imported and then exported and then reimported free of duty due to the declaration, it is used insured Customs control over duty free merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 292.

Estimated Total Annualized Cost on the Public: $5,942.

REQUEST FOR COMMENTS: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Dated: September 13, 1996.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 96–24347 Filed 9–20–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Bonded Warehouse Proprietor's Submission

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bonded Warehouse Proprietor's Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1515–0093.

Form Number: Customs Form 300.

Abstract: Customs Form 300 is prepared by Bonded Warehouse Proprietors and submitted to the Customs Service annually. The document reflects all bonded merchandise entered, released, and minipulated, and includes beginning and ending inventories.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,403.

Estimated Time Per Respondent: 132 hours.

Estimated Total Annual Burden Hours: 185,757.

Estimated Total Annualized Cost on the Public: $1,671,813.

REQUEST FOR COMMENTS: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Dated: September 13, 1996.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 96–24348 Filed 9–20–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Application and Approval To Manipulate, Examine, Sample, or Transfer Goods

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application and Approval to Manipulate, Examine, Sample, or Transfer Goods. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Title: Application and Approval to Manipulate, Examine, Sample, or Transfer Goods.

OMB Number: 1515–0021.

Form Number: Customs Form 3499.

Abstract: Customs Form 3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under Customs supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions and individuals.

Estimated Number of Respondents: 2,290.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 13,740.

Estimated Total Annualized Cost on the Public: $109,920.

REQUEST FOR COMMENTS: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Dated: September 13, 1996.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 96–24349 Filed 9–20–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Declaration of Owner of Merchandise Obtained (Other Than) in Pursuance of a Purchase or Agreement To Purchase and Declaration of Importer of Record When Entry Is Made by an Agent

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Owner of Merchandise Obtained (Other Than) in Pursuance of a Purchase or Agreement To Purchase and Declaration of Importer of Record When Entry Is Made by an Agent. This request for comment is being made pursuant to

the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Title: Declaration of Owner of Merchandise Obtained (Other Than) in Pursuance of a Purchase or Agreement To Purchase and Declaration of Importer of Record When Entry Is Made by an Agent.

OMB Number: 1515–0050.

Form Number: Customs Forms 3347 and 3347A.

Abstract: Customs Form 3347 and 3347A allows an agent to submit, subsequent to making the entry, the declaration of the importer of record which is required by statute. These forms also permit a nominal importer of record to file the declaration of the actual owner and to be relieved of statutory liability for the payment of increased duties.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 950.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 570.

Estimated Total Annualized Cost on the Public: $12,312.

REQUEST FOR COMMENTS: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Dated: September 13, 1996.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 96–24350 Filed 9–20–96; 8:45 am]

BILLING CODE 4820–02–P

Proposed Collection; Comment Request; Air Cargo Manifest

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Air Cargo Manifest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Title: Air Cargo Manifest to Manipulate, Examine, Sample, or Transfer Goods.

OMB Number: 1515–0001.

Form Number: Customs Form 7509.

Abstract: Customs Form 7509 is the source of information that provides for the accountability, integrity, and security of goods in air commerce that are imported into the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions and individuals.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 34 minutes.

Estimated Total Annual Burden Hours: 116,586.

Estimated Total Annualized Cost on the Public: $109,920.

REQUEST FOR COMMENTS: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Dated: September 13, 1996.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 96–24351 Filed 9–20–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

[PS–54–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–54–89 (TD 8444), Applicable Conventions Under the Accelerated Cost Recovery System (§ 1.168(d)–1(b)(7)).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Applicable Conventions Under the Accelerated Cost Recovery System.

OMB Number: 1545–1146.

Regulation Project Number: PS–54–89 (Final).

Abstract: The regulations describe the time and manner of making the notation required to be made on Form 4562 under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with section 168 of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 700.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 70.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 11, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–24358 Filed 9–20–96; 8:45 am]

BILLING CODE 4830–01–U

[PS–55–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and a temporary regulation, PS–55–93 (TD 8528), Certain Elections for Intangible Property (§ 1.197–1T).

DATES: Written comments should be received on or before November 22, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Elections for Intangible Property.

OMB Number: 1545–1425.

Regulation Project Number: PS–55–93 Notice of proposed rulemaking and temporary regulations.

Abstract: The regulations provide procedures for taxpayers to make elections regarding the amortization and depreciation of certain intangible property pursuant to sections 197 and 167(f) of the Internal Revenue Code. The information will be used to verify that a taxpayer is properly reporting its amortization and income taxes.

Current Actions: The only change is that the estimated number of respondents has decreased because the time period for making the election has passed. Only taxpayers who request an extension of time to make the retroactive election under section 301.9100 of the Procedure and Administrative Regulations will be filing the election.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 16, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–24359 Filed 9–20–96; 8:45 am]

BILLING CODE 4830–01–U

[FI–27–89; FI–61–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, FI–27–89 (TD 8366), Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91 (TD 8431), Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (§§ 1.67–3, 1.860D–1, 1.860F–4, 1.6049–4 and 1.6049–7).

DATES: Written comments should be received on or before November 22, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: FI–27–89, Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91, Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements.

OMB Number: 1545–1018. Regulation Project Number: FI–27–89 (Final), and FI–61–91 (Final).

Abstract: The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 655.

Estimated Time Per Respondent: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 978.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 13, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–24360 Filed 9–20–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8837

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8837, Adoption of Revenue Procedure Model Amendments.

DATES: Written comments should be received on or before November 22, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Adoption of Revenue Procedure Model Amendments.

OMB Number: 1545–1497.

Form Number: 8837.

Abstract: Form 8837 will act as a transmittal document and will be used by sponsors of ''master or prototype'' plans, regional prototype plans, and volume submitter plans. Revenue procedures implementing law changes or other changes may be issued at any time requiring changes in plan documents. These changes or amendments can be submitted to the Service using this form.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 2 hrs. 30 min.

Estimated Total Annual Burden Hours: 7,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 16, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–24361 Filed 9–20–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Veterans' Advisory Committee on Education has been renewed for a 2-year period beginning September 9, 1996, through September 9, 1998.

Dated: September 12, 1996.

By direction of the Secretary.

Eugene A. Brickhouse,

Committee Management Officer.

[FR Doc. 96–24245 Filed 9–20–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
September 23, 1996

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Part 1, et al.

1996 Changes to Patent Practice and Procedure; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 3, 5, and 7

[Docket No. 960606163–6163–01]

RIN 0651–AA80

1996 Changes to Patent Practice and Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is proposing to amend the rules of practice in patent cases to simplify the requirements of the rules, rearrange portions of the rules for better context, and eliminate unnecessary rules or portions thereof as part of a government-wide effort to reduce the regulatory burden on the American public. The procedure for filing of continuation and divisional applications would be simplified. Another type of simplification being proposed that would affect several rules is the acceptance of a statement that errors were made without deceptive intent, unaccompanied by any further showing of facts and circumstances. The naming of inventors would no longer be required on filing of the application in order to obtain a filing date, which would eliminate the need for certain petitions to correct inventorship.

DATES: Written comments must be received on or before November 22, 1996, to ensure consideration.

Comments will be available for public inspection after receipt and will be available on the Internet (address: regreform@.uspto.gov). Commentators should note that since their comments will be made publicly available, information that is not desired to be made public, such as the address and phone number of the commentator, should not be included in the comments. A public hearing will not be conducted.

ADDRESSES: Comments should be sent by mail message over the Internet addressed to regreform@.uspto.gov.

Comments may also be submitted by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231, Attention: Jeffrey V. Nase or by FAX to (703) 308–6916. Although comments may be submitted by mail or FAX, the Office prefers to receive comments via the Internet. Where comments are submitted by mail, the Office would appreciate the comments to be electronically filed on a DOS formatted 3¼ inch disk along with a paper copy of the comments.

The comments will be available for public inspection in Suite 520, of One Crystal Park, 2011 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein, by telephone at (703) 305–9285 or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231 marked to the attention of Mr. Bernstein or by FAX to (703) 308–6916.

SUPPLEMENTARY INFORMATION: This proposed rule change seeks to implement President Clinton's program of reducing the regulatory burden on the American public, which program is supported by the Office as published in the *Official Gazette* on June 6, 1995. 1175 *Off. Gaz. Pat. Office* 19, 20 and 22. The proposed changes are directed towards: (1) Simplification of procedures for filing continuation and divisional applications, establishing lack of deceptive intent in reissues, petition practice, and in the filing of papers correcting improperly requested small entity status; (2) elimination of unnecessary requirements, such as certain types of petitions to correct inventorship under § 1.48; (3) removal of rules and portions thereof that merely represent instructions as to the internal affairs of the Office more appropriate for inclusion in the Manual of Patent Examining Procedure (MPEP); (4) rearrangement of portions of rules to improve their context; and (5) clarification of rules to aid in understanding of the requirements that they set forth.

The Office is particularly interested in comments as to whether the proposed rules if adopted should be applied to already pending reissue oaths or declarations under the new proposed standards of § 1.175 as it is to be amended under the final rule and already pending petitions and papers under §§ 1.28(c)(2), 1.48 and 1.324 as they are to be amended under the final rule for such papers submitted prior to the effective date of any final rule change, *i.e.*, should the advantages proposed by these suggested rule changes that are incorporated into the final rule be applied retroactively to papers submitted prior to the effective date of the final rule.

Discussion of Specific Rules

If Title 37 of the Code of Federal Regulations, Parts 1, 3, 5 and 7 are amended as proposed:

Section 1.4(d) paragraphs (1) and (2) would be amended to place the current subject matter of both paragraphs into paragraphs (d)(1) (i) and (ii) with a clarifying reference in paragraph (d)(1)(ii) to the submission of a copy of a copy.

Paragraph (d)(2) of § 1.4 would be amended so that the certifications set forth in the rule would be automatically made upon presenting any paper to the Office by the party presenting the paper and in an added paragraph (d)(3)(ii) identifying by the statute, 18 U.S.C. 1001 that sets forth the required standards of conduct. Sanctions would be set forth in a § 1.4(d)(3)(i) for violation of the certifications in § 1.4(d)(2) and for violations of the standards of conduct in § 1.4(d)(3)(ii).

The proposed amendments to § 1.4(d) would support proposed amendments to §§ 1.6, 1.8, 1.10, 1.27, 1.28, 1.48, 1.52, 1,55, 1.69, 1.102, 1.125, 1.137, 1.377, 1.378, 1.804, 1.805, (1.821 and 1.825 will be reviewed at a later date in connection with other matters), 3.26, and 5.4 that would delete the requirement for verification (MPEP 602) of statements of facts by applicants and other parties who are not registered to practice before the Office. The absence of a required verification has been a source of delay in the prosecution of applications, particularly where such absence is the only defect noted. The proposed change to § 1.4(d) would automatically incorporate required averments thereby eliminating the necessity for a separate verification for each statement of facts that is to be presented, except for those instances where the verification requirement is retained. Similarly, the proposed amendments to § 1.4(d) would support a proposed amendment to §§ 1.97 (§§ 1.637 and 1.673 will be reviewed at a later date in connection with other matters) that would change the requirements for certifications to requirements for statements. The oath or declaration under §§ 1.63 and affidavits under §§ 1.131 and 1.132 would not be affected. The requirement in § 5.25(a)(3) for a verified statement would be maintained, as the required explanation must include a showing of facts (evidence), not mere allegations, which will be weighed by the official deciding the petition for retroactive license. The statements in §§ 1.494(e) and 1.495(f) that verification of translations of documents filed in a language other than English may be required would be maintained, as such requirements are made rarely and only when deemed necessary (when persons persist in translations which appear on their face to be inaccurate, for example). The requirements for certification of service on parties in §§ 1.248, 1.510, 1.637 and 10.142 would be maintained.

Section 1.4 would also have a new paragraph (g) related to an applicant who has not made of record a registered attorney or agent being required to state whether assistance was received in the preparation or prosecution of a patent application. This is proposed to be transferred from § 1.33(b) for consistent contextual purposes.

Section 1.6 paragraph (e)(2) would be amended to remove the requirement that the statement be verified in accordance with the proposed change to § 1.4(d)(2).

Section 1.8 paragraph (b)(3) would be amended to remove the requirement that the statement be verified in accordance with the proposed change to § 1.4(d)(2).

Section 1.10 would be amended to remove the requirement for a statement that is verified. See comments to § 1.4(d). It is also proposed to clarify the section by substitution of ''averring to the fact'' with ''stating.''

Section 1.14 would have the title and paragraphs (a) and (e) amended to replace the term ''secrecy'' by ''confidence'' to conform to the usage in 35 U.S.C. 122. Paragraph (a) of § 1.14 would have a reference to serial number changed to application number. Section 1.14 would also be amended to have paragraph (f) added to recognize the proposed change to § 1.47 (a) and (b) that are also exceptions to maintaining pending applications in confidence by providing public notice of the prospective issuance of a pending application to nonsigning inventors.

Section 1.17 (and § 1.136(a)) would add a recitation to an extension of time fee payment for a reply filed within a fifth month after a nonstatutory or shortened statutory period for reply was set. Section 1.17(a) is specifically proposed to be subdivided into paragraphs (a)(1) through (a)(5), with paragraphs (a)(1) through (a)(4) setting forth the amounts for one-month through four-month extension fees proposed in Revision of Patent Fees for Fiscal Year 1997, 1186 *Off. Gaz. Pat. Office* 14 (May 7, 1996); 61 FR 19224 (May 1, 1996). Paragraph (a)(5) would provide the small and other than small entity amounts for the newly proposed fifth-month extension fee. Sections 1.17 (b), (c) and (d) are proposed to be removed as unnecessary in view of proposed § 1.17 (a)(1) through (a)(5).

Fee levels, as proposed by the Revision of Patent Fees for Fiscal Year 1997, were used in establishing the fifth-month extension of time fees for large and small entities for paragraph (a)(5) of § 1.17. A shortened statutory period for reply of one month may be set, thereby allowing a fifth month for reply within the six-month statutory period for response. Section 1.17(a) is being amended to recognize the availability of a fifth-month extension of time when a one-month or a thirty-day shortened statutory period is set (*e.g.*, in a written requirement for restriction). The addition of a fifth-month would then also become available for replies with nonstatutory periods of time set, such as for replies to Notices to File Missing Parts of Applications.

Section 1.17(i), as proposed, would: add a petition fee under § 1.59 for expungement and return of papers, delete the references to petitions under §§ 1.60 and 1.62 to accord a filing date in view of the proposed deletion of §§ 1.60 and 1.62, and to change ''divisional reissues'' to ''multiple reissue applications.'' Moreover, § 1.17, as well as §§ 1.103, 1.112, 1.113, 1.133, 1.134, 1.135, 1.136, 1.142, 1.144, 1.146, 1.191, 1.192, 1.291, 1.294, 1.484, 1.485, 1.488, 1.494, 1.495, 1.530, 1.550, 1.560, (1.605, 1.617, 1.640, and 1.652 will be reviewed at a later date in connection with other matters), 1.770, 1.785, (1.821 will be reviewed at a later date in connection with other matters), and 5.3, would replace the phrases ''response'' and ''respond'' with ''reply'' for consistency with § 1.111.

Section 1.21(n), as proposed, would delete the reference to an improper application under §§ 1.60 or 1.62 in view of the proposed deletion of §§ 1.60 and 1.62.

Section 1.26(a) is proposed to be amended to better track the statutory language of 35 U.S.C. 42(d) by deleting ''[m]oney'' and ''actual,'' adding ''fee'' and adding back language relating to refunds of fees paid that were not ''required'' that was inadvertently dropped in the July 1, 1993, publication of title 37 CFR, and from subsequent publications.

Section 1.27 (a) through (d) would be amended to remove the requirement that a statement filed thereunder be ''verified.'' See comments relating to § 1.4(d). Section 1.27(b) is proposed to be amended for clarification with the movement of a clause relating to ''any verified statement'' within a sentence.

Section 1.28(a) would be amended to remove the requirement for a statement that is ''verified.'' See comments relating to § 1.4(d).

Section 1.28(a) would also be amended to provide that a new small entity statement would not be required for reissue or continued prosecution (§ 1.53(b)(3)) applications where small entity status is still proper and reliance is had on a reference to a small entity statement filed in a prior application or patent or a copy thereof is supplied.

Section 1.28(a) would be further amended to state that the payment of a small entity basic statutory filing fee in a nonprovisional continuing application, which claims benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) of a prior application or in a continuing prosecution application, or in a reissue application, wherein the prior application or the patent has small entity status, will substitute for the reference in the continuing or reissue application to the small entity statement in the prior application or in the patent, thereby establishing small entity status in such nonprovisional application.

Section 1.28(a) is also amended to require a new determination of continued entitlement to small entity status for continued prosecution applications filed under § 1.53(b)(3) and to clarify that the refiling of applications as continuations, divisions and continuation-in-part applications and the filing of reissue applications also require a new determination of continued entitlement to small entity status prior to reliance on small entity status in a prior application or patent.

Section 1.28(c) would have the requirement removed for a statement of facts explaining how an error in payment of small entity fees occurred in good faith and how and when the error was discovered. A fee deficiency payment based on the difference between fees originally paid as a small entity and the current large entity amount at the time of full payment of the fee deficiency will be deemed to constitute a belief by the party submitting the deficiency payment that small entity status was established in good faith and that the original payment of small entity fees was made in good faith. Any paper submitted under § 1.28(c) will be placed in the appropriate file without review after the processing of any check or the charging of any fee deficiency payment specifically authorized.

Section 1.33 would no longer provide that the required residence and post office address of the applicant can appear elsewhere than in the oath or declaration under § 1.63. Section 1.63(a)(3) would be amended to require that the post office address as well as the residence be identified therein and not elsewhere. Permitting the residence to be elsewhere in the application other than the oath or declaration, as in current § 1.33(a), is inconsistent with current § 1.63(c) that states the residence must appear in the oath or declaration. The requirement for placement of the post office address is proposed to be made equivalent to the requirement for the residence to

eliminate confusion between the two, which often are the same destination and are usually provided in the oath or declaration. The reference in § 1.33(a) to the assignee providing a correspondence address has been moved within § 1.33(a) for clarification. Other clarifying language including a reference to § 1.34(b), use of the terms ''provided,'' ''furnished'' rather than ''notified,'' and ''application'' rather than ''case,'' while ''of which the Office'' would be deleted.

Section 1.33(b) would be removed and the subject matter transferred to new § 1.4(g).

Section 1.41(a) (and § 1.53) would no longer require that a patent be applied for in the name of the actual inventors for an application for patent to receive a filing date. The requirement for use of full names would be moved to § 1.63(a) for better context. The requirement for naming of the inventor or inventors would be replaced with only a request that such names or an identifying name be submitted on filing of the application. The use of very short identifiers should be avoided to prevent confusion. Without supplying at least an identifying name that is specific the Office may have no ability or only a delayed ability to match any papers submitted after filing of the application and before issuance of an identifying Application number with the application file. Any identifier used that is not an inventor's name must be specific, alphanumeric characters of reasonable length, and must be presented in such a manner that it is clear to application processing personnel what the identifier is and where it is to be found. It is strongly suggested that applications filed without an executed oath or declaration under § 1.63 or 1.175 continue to use an inventor's name for identification purposes. Failure to apprise the Office of the application identifier being used will result in applicants having to resubmit papers that could not be matched with the application and proof of the earlier receipt of such papers where submission was time dependent.

Paragraph (a) of § 1.41 would also be amended to recite that the actual inventor or inventors of an application are set forth in an executed § 1.63 oath or declaration to correspond to the proposed change in § 1.53(b)(1)(iii). Hence, the recitation of the inventorship in an application submitted under § 1.53(d) without an executed oath or declaration for purposes of identification may be changed merely by the later submission of an oath or declaration executed by a different inventive entity without recourse to a petition under § 1.48.

Section 1.47 would be amended to provide for publication in the Official Gazette of a notice of filing for all applications submitted under this section rather than only when notice to the nonsigning inventor(s) is returned to the Office undelivered or when the address of the nonsigning inventor(s) is unknown. The information to be published includes: The Application number, filing date, invention title and inventors identifying the missing inventor.

Section 1.47 would also be amended for clarification purposes. A reference to an ''omitted inventor'' in § 1.47(a) would be replaced with ''nonsigning inventor.'' Statements in §§ 1.47 (a) and (b) that a patent will be granted upon a satisfactory showing to the Commissioner would be deleted as unnecessary. Section 1.47(b) is proposed to be amended to clarify that it applies only where *none* of the inventors are willing or can be found to sign the Declaration by substitution of ''an inventor'' by ''all the inventors.'' The use of ''must state'' in regard to the last known address would be deleted as redundant in view of the explicit requirement for such address in the rule. The sentence in § 1.47(b) referring to the filing of the assignment, written agreement to assign or other evidence of proprietary interest would be deleted as redundant in view of the requirement appearing earlier in § 1.47(b) calling for ''proof of pertinent facts.''

Section 1.48 for inventorship corrections in an application (§ 1.324, for inventorship corrections in a patent, and § 1.175, for reissue declarations) would no longer require factual showings to establish a lack of deceptive intent. All that will be needed is a statement to that effect.

Section 1.48 would be amended in its title to clarify that the section is related to patent applications as opposed to patents.

Section 1.48(a) would not require correction of the inventorship if the inventorship or other identification under § 1.41 was set forth in error on filing of the application. Section 1.48(a) is proposed to be amended to apply only to correction of inventor or inventors from that named in an originally filed executed oath or declaration and not to the naming of inventors or others for identification purposes as is currently proposed under § 1.41. The statement to be submitted would be required only from the person named in error as an inventor or from the person who through error was not named as an inventor rather than from all the original named inventors so as to comply with 35 U.S.C. 116. The present requirement that any amendment of the inventorship under § 1.48(a) be ''diligently'' made would be removed. The applicability of a rejection under 35 U.S.C. 102(f)/(g) against an application with the wrong inventorship set forth therein and any patent that would issue thereon is deemed to provide sufficient motivation for prompt correction of the inventorship without the need for a separate requirement for diligence.

A clarifying reference to § 1.634 would be added in § 1.48(a) for instances when inventorship correction is necessary during an interference and has been moved from § 1.48(a)(4) for improved contextual purposes.

The § 1.48(a)(1) statement would require a statement only as to the lack of deceptive intent rather than a statement of facts to establish how the inventorship error was discovered and how it occurred, since the latter is proposed to be deleted. Additionally, the persons from whom a statement is required now includes any person not named in error as an inventor but limits statements from the original named inventors to only those persons named in error as inventors rather than all persons originally named as inventors including those correctly named. The paragraph would be amended to remove the requirement that the statement be verified in accordance with the proposed change to § 1.4(d)(2).

Section 1.48(a)(2) would be amended for clarification purposes to indicate the availability of §§ 1.42, 1.43 or 1.47 in meeting the requirement for an executed oath or declaration under § 1.63 from each actual inventor. Section 1.47 would only be applicable to the person to be added as an inventor (inventors named in an application transmittal letter can be deleted without petition). For those persons already having submitted an executed oath or declaration under § 1.63, a petition under § 1.183, requesting waiver of reexecution of an oath or declaration, may be an appropriate remedy. The requirement for an oath or declaration is maintained in § 1.48(a) notwithstanding its replacement in § 1.324 for issued patents by a statement of agreement or lack of disagreement with the requested change in view of the need to satisfy the duty of disclosure requirement in a pending application that is set forth in a § 1.63 oath or declaration.

Section 1.48(a)(4) would be amended to include a citation to § 3.73(b) to clarify the requirements for submitting a written consent of assignee, which is subject to the requirement under § 3.73(b), and to delete the reference to an application involved in an interference, which is being moved to

§ 1.48(a). Section 1.48(a)(4) would also be amended to clarify that the assignee required to submit its written consent is only the existing assignee of the original named inventors at the time the petition is filed and not any party that would become an assignee based on the grant of the inventorship correction.

Section 1.48(b) would also be amended to remove the requirement that a petition thereunder be diligently filed. The applicability of a rejection under 35 U.S.C. 102(f)/(g) against an application with the wrong inventorship set forth therein and any patent that would issue thereon is deemed to provide sufficient motivation for prompt correction of the inventorship without the need for a separate requirement for diligence.

Section 1.48(b) would have a clarifying reference to § 1.634 added for instances when inventorship correction is necessary during an interference.

Section 1.48(c) would be amended so that a petition thereunder no longer need meet the current requirements of § 1.48(a), which are also proposed to be changed. A statement from each inventor being added that the inventorship amendment is necessitated by amendment of the claims and that the error occurred without deceptive intent would be required under § 1.48(c)(1) rather than the previous requirement of a statement from each original named inventor. The previous requirements under § 1.48(a) for an oath or declaration, the written consent of an assignee and the written consent of any assignee are retained, but are now separately set forth in §§ 1.48(c)(2) through (c)(4). The particular circumstances of a petition under this paragraph, adding an inventor due to an amendment of the claims that incorporates material attributable to the inventor to be added, is seen to be indicative of a lack of deceptive intent in the original naming of inventors. Accordingly, all that must be averred to is that an amendment of the claims has necessitated correction of the inventorship and that the inventorship error existing in view of the claim amendment occurred without deceptive intent. The current requirement for diligence in filing the petition based on an amendment to the claims would not be retained as applicants have the right, prior to final rejection or allowance, to determine when particular subject matter is to be claimed. Applicants should note that any petition under § 1.48 submitted after allowance is subject to the requirements of § 1.312, and a petition submitted after final rejection is not entered as a matter of right. The statement of facts must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

Section 1.48(c)(2) would clarify the availability of §§ 1.42, 1.43 and 1.47 in meeting the requirement for an executed oath or declaration under § 1.63. Section 1.47 would only be applicable to the person to be added as an inventor. For those persons already having an executed oath or declaration under § 1.63 a petition under § 1.183, requesting waiver of reexecution of an oath or declaration, may be an appropriate remedy.

Section 1.48(c)(4) would clarify that the assignee required to submit its written consent is only the existing assignee of the original named inventors at the time the petition is filed and not any party that would become an assignee based on the grant of the inventorship correction. A citation to § 3.73(b) would be presented.

Section 1.48(d) would be amended by addition of ''their part'' to replace ''the part of the actual inventor or inventors'' and of ''omitted'' to replace ''actual'' to require statements from the inventors to be added rather than from all the actual inventors so as to comply with 35 U.S.C 116. Section 1.48(d)(1) would also be clarified to identify the error to be addressed is the inventorship error. It is not expected that the party filing a provisional application will normally need to correct an error in inventorship under this paragraph by adding an inventor therein except when necessary under § 1.78 to establish an overlap of inventorship with a continuing application. Automatic correction of the inventorship is not possible as is the case for nonprovisional applications when an executed oath or declaration under § 1.63 with the correct inventorship is later filed; since an oath or declaration is not to be submitted in provisional applications, § 1.51(a)(2).

Section 1.48(d)(1) would be amended to remove the requirement that the statement be verified in accordance with the proposed change to § 1.4(d)(2).

Section 1.48(e)(1) would be amended to replace a requirement in provisional applications that the required statement be one ''of facts'' directed towards ''establishing that the error'' being corrected ''occurred without deceptive intention,'' thereby requiring only a statement that the inventorship error occurred without deceptive intent. Paragraph (e)(1) would also be amended to remove the requirement that the statement be verified in accordance with the proposed change to § 1.4(d)(2). It is not expected that the party filing a provisional application would need to file a petition under this paragraph since the application will go abandoned by operation of law, § 1.53(e)(2), and the need to delete an inventor will not affect the overlap of inventorship needed to claim priority under § 1.78(a)(3) for any continuing application.

Section 1.48(e)(3) would be amended to clarify that the assignee required to submit its written consent is only the prior existing assignee before correction of the inventorship is granted and not any party that would become an assignee based on the grant of the inventorship correction and a reference to § 3.73(b) would be added.

Section 1.48(f) would be added to provide that the later filing of an executed oath or declaration would act to correct the inventorship without a specific petition for such correction and would be used to issue a filing receipt and process the application notwithstanding any inventorship or other identification name earlier presented.

Section 1.48(g) would be added to specifically recognize that the Office may require such other information as may be deemed appropriate under the particular circumstances surrounding a correction of the inventorship.

Section 1.51(c) covering the use of an authorization to charge a deposit account is proposed to be removed as unnecessary in view of § 1.25(b).

Section 1.52 paragraphs (a) and (d) would be amended to remove the requirement that the translation be verified in accordance with the proposed change to § 1.4(d)(2). Paragraphs (a) and (d) of this section would also be amended to clarify the need for a statement that the translation being offered is an accurate translation, as is also proposed in § 1.69 paragraph (b).

Section 1.53(b)(1), as proposed, would remove: (1) The phrase ''in the name of the actual inventor or inventors as required by § 1.41,'' and (2) the sentence ''[i]f all the names of the actual inventor or inventors are not supplied when the specification and any required drawing are filed, the application will not be given a filing date earlier than the date upon which the names are supplied unless a petition with the fee set forth in § 1.17(i) is filed which sets forth the reasons the delay in supplying the names should be excused.'' These proposed changes are consistent with the proposed change to § 1.41. Section 1.53(b)(1) (and § 1.41(a)) would no longer require that a patent be applied for in the name of the actual inventors for an application for patent to receive a filing date.

Section 1.53(b)(1), as proposed, would change (1) ''[a] continuation or

divisional application (filed under the conditions specified in 35 U.S.C. 120, 121 or 365(c) and § 1.78(a)) may be filed under this section, § 1.60 or § 1.62'' and (2) ''[a] continuation-in-part application may also be filed under this section or § 1.62'' to (1) [a] continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120, 121 or 365(c) and § 1.78(a)) may be filed under this paragraph or paragraph (b)(3) of this section'' and (2) ''[a] continuation-in-part application must be filed under this paragraph, respectively. Upon the deletion of §§ 1.60 and 1.62, any continuation-in-part applications must be filed under § 1.53(b)(1), but a continuation or divisional application may be filed under §§ 1.53(b)(1) or (b)(3).

Section 1.53(b)(1), as proposed, would also add a new paragraph (b)(1)(i) expressly providing that any continuation or divisional application may be filed by all or by less than all of the inventors named in a prior application, and that a newly executed oath or declaration is not required pursuant to §§ 1.51(a)(1)(ii) and 1.53(d) in a continuation or divisional application filed by all or by less than all of the inventors named in a prior application, provided that one of the following is submitted: (1) A copy of the executed oath or declaration filed to complete (§ 1.51(a)(1)) the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c), or (2) a copy of an unexecuted oath or declaration, and a statement that the copy is a true copy of the oath or declaration that was subsequently executed and filed to complete (§ 1.51(a)(1)) the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c). The phrase ''most immediate prior national application'' is proposed rather than ''prior application'' to accommodate those situations in which the prior application was filed under current §§ 1.60 or 1.62, or where the prior application was itself a continuation or divisional application and filed with a copy of the executed oath or declaration from a prior application pursuant to § 1.53(b)(1)(i). As is currently the situation under §§ 1.60 and 1.62, the applicant's duty of candor and good faith including compliance with the duty of disclosure requirements of § 1.56 is continuous and applies to the continuation, divisional or continued prosecution (§ 1.53(b)(3)) application, notwithstanding the lack of a newly executed oath or declaration. Therefore, applicants should be informed of the intent to file a continuation, divisional or continued prosecution application with a copy of the proposed claimed supplied. New § 1.53(b)(1)(i), as proposed, would also reference § 1.53(d) for the filing of a continuation or divisional application without the concomitant submission of a newly executed oath or declaration or a copy of the oath or declaration for the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c).

Section 1.53(b)(1), as proposed, would also add a new paragraph (b)(1)(i)(A) providing that the copy of the executed or unexecuted oath or declaration for the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c) must be accompanied by a statement from applicant, counsel for applicant or other authorized party requesting the deletion of the names of the person or persons who are not inventors in the continuation or divisional application. Where the continuation or divisional application and copy of the oath or declaration from the prior application is filed without a statement from an authorized party requesting deletion of the names of any person or persons named in the prior application, the continuation or divisional application will be treated as naming as inventors the person or persons named in the prior application, taking into account any petition for correction of inventorship pursuant to § 1.48 in the prior application that has been granted prior to the filing of the continuation or divisional application. For situations where an inventor or inventors are to be added in a continuation or divisional application see paragraph (ii) under this section.

The statement requesting the deletion of the names of the person or persons who are not inventors in the continuation or divisional application must be signed by person(s) authorized pursuant to § 1.33(a) to sign an amendment in the continuation or divisional application. That is, such a statement must be signed by: (1) All of the inventors in the continuation or divisional application (*see* MPEP 714.01(a)), (2) the assignee of record of the entire interest in the continuation or divisional application in compliance with § 3.73(b) (*see* MPEP 324), (3) an attorney or agent of record, or (4) a registered attorney or agent acting in a representative capacity pursuant to § 1.34(a).

Section 1.53(b)(1)(i), as proposed, would add a new paragraph (B) providing that where the power of attorney or correspondence address was changed during the prosecution of the prior application, the change in power of attorney or correspondence address must be identified in the continuation or divisional application.

Section 1.53(b)(1), as proposed, would add a new paragraph (ii) providing that a newly executed oath or declaration must be filed in a continuation or divisional application naming an inventor not named in the prior application. For situations where an inventor or inventors are to be added in a continuation or divisional application the Office will not require a petition pursuant to § 1.48, but will require only the newly executed oath or declaration naming the correct inventorship in the continuation or divisional application under § 1.53. For deletion of inventors in a continuation or divisional application see § 1.53(b)(1)(i) and (b)(3). New § 1.53(b)(1)(ii), as proposed, would also provide that a newly executed oath or declaration must be filed in a continuation-in-part application, which application may name all, more, or less than all of the inventors named in the prior application.

Section 1.53(b)(1)(iii), as proposed, would clarify that the inventorship is not set forth in an application until an executed oath or declaration is submitted therein in accordance with the proposed change to § 1.41(a). Where the inventorship was voluntarily set forth on filing an application without an executed oath or declaration pursuant to § 1.53(d) for purposes of identification, the actual inventorship of the application will be controlled by the later submission of an executed oath or declaration which may change what was originally identified as the inventorship without recourse to a petition under § 1.48 in accordance with the proposed change to § 1.41(a).

Section 1.53(b)(2), as proposed, would remove the phrase ''in the name of the actual inventor or inventors as required by § 1.41'' and the sentence ''[i]f all the names of the actual inventor or inventors are not supplied when the specification and any required drawing are filed, the provisional application will not be given a filing date earlier than the date upon which the names are supplied unless a petition with the fee set forth in § 1.17(q) is filed which sets forth the reasons the delay in supplying the names should be excused.'' Section 1.53(b)(2) (and § 1.41(a)) would no longer require that a patent be applied for in the name of the actual inventors for an application for patent to receive a filing date.

Section 1.53(b)(2)(ii), as proposed, would change the phrase ''treated as'' to ''converted to'' for clarity.

Section 1.53(b)(3) is proposed to be added to provide for the filing of a continued prosecution application.

Section 532 of the Uruguay Round Agreement Act (Pub. L. 103–465, section 532, 108 Stat. 4809 (1994)) amended 35 U.S.C. 154 to provide that the term of patent protection begins on the date of patent grant and ends on the date 20 years from the filing date of the application. As any delay in the prosecution of the application will reduce the term of patent protection, reducing unnecessary delays in the prosecution of applications is a mutual interest of patent applicants and the Office.

An applicant in a nonprovisional application filed on or after June 8, 1995, must file a continuing application to obtain further examination subsequent to a final rejection or other final action. The current continuing practice under §§ 1.60 and 1.62 of processing an application filed thereunder with a new application number and filing date delays the examination of such continuing applications. Therefore, the Office proposes to eliminate this delay by: (1) Not assigning a new application number to an application filed under § 1.53(b)(3), and (2) not processing the application filed under § 1.53(b)(3) with a filing date of the request for an application under § 1.53(b)(3). Rather, a continued prosecution application would retain the application number and the filing date of the prior application to which it relates for identification purposes thereby allowing examination to proceed without the delays that would be caused by the current need to assign to applications filed under §§ 1.60 and 1.62 a new application number and filing date as of the date the Rule 60 or 62 application was requested (submitted).

Section 1.53(b)(3), as proposed, would specifically provide that: (1) In a complete nonprovisional application (§ 1.51(a)(1)) filed on or after June 8, 1995, a continuation or divisional application that discloses and claims only subject matter disclosed in that prior complete application and names as inventors the same or less than all the inventors named in that prior complete application may be filed under this paragraph, and (2) the filing date of the continued prosecution application, such as for continuity purposes under 35 U.S.C. 120 and § 1.78, is the date on which a request for an application under this paragraph, including identification of the prior application number is filed.

The specific reference to the prior application required by 35 U.S.C. 120 and § 1.78(a)(2) will be satisfied by a sentence that the continued prosecution application is a continuation or divisional, as appropriate, of prior application number ##/###,###, filed ##/##/##, now abandoned, notwithstanding that the so identified application number and filing date are also the application number and filing date assigned to the continued prosecution application under this paragraph. Where the continued prosecution application derives from a chain of § 1.53(b)(3) applications assigned a common application number and filing date, a sentence that the application is a continuation or divisional, as appropriate, of the common application number and filing date will constitute a specific reference (35 U.S.C. 120 and § 1.78(a)(2)) to each application assigned that application number and filing date. Since § 1.53(b)(3) is proposed to be limited to continuations and divisionals, the actual filing date of the request for an application under § 1.53(b)(3) will be relevant only to the copendency requirement of 35 U.S.C. 120 and § 1.78 and patent term *vis-a-vis* Pub. L. 103–465. Nevertheless, § 1.53(b)(3) is proposed to be limited to a continuation or divisional of a complete application filed on or after June 8, 1995, so as to avoid any dispute as to whether the application is subject to 20-year patent term as set forth in Pub. L. 103–465. That is, any continuation or divisional of an application filed prior to June 8, 1995, as well as any continuation-in-part, must be filed under § 1.53(b)(1).

Section 1.53(b)(3)(i)(A), as proposed, would provide that an application under § 1.53(b)(3) (a continued prosecution application) will use the specification, drawings and oath or declaration from the prior complete application and will be assigned its application number for identification purposes.

Section 1.53(b)(3)(i)(B), as proposed, would provide that the filing of a request for a continued prosecution application is a request to expressly abandon the prior application as of the filing date granted the application under § 1.53(b)(3).

Section 1.53(b)(3)(i)(C), as proposed, would provide that a continued prosecution application must be filed before the payment of the issue fee, abandonment of, or termination of proceedings on the prior application with the filing date of a request for a continued prosecution application being the date on which a request for a continued prosecution application including identification of the application number of the prior complete application is filed.

Section 1.53(b)(3)(ii) (A) and (B), as proposed, would provide that filing fee for a continued prosecution application is the statutory basic filing fee as set forth in § 1.16 and any additional fee due based on the number of claims remaining in the application after entry of any amendment accompanying the request for an application under this section and entry of any amendments under § 1.116 unentered in the prior application which applicant has requested to be entered in the new application.

In instances in which a continued prosecution application is submitted without the basic statutory filing fee or any additional claims fee due, the Office will continue to mail a ''Notice of Missing Parts'' under § 1.53(d)(1) and give the applicant a period of time within which to file the fee and to pay the surcharge under § 1.16(e) to prevent abandonment of the application (*see* § 1.53(d)(1)). Thus, the filing of a continued prosecution application without the basic statutory filing fee or any additional claims fee due will result in a delay in the initial processing of the application. An applicant, however, may eliminate or limit this delay by either filing the request for a continued prosecution application with the appropriate filing fee or not delaying the submission of the appropriate filing fee until the mailing of or expiration of the period for response to the ''Notice of Missing Parts.''

Section 1.53(b)(3)(iii), as proposed, would provide that if a continued prosecution application is filed by less than all the inventors named in the prior application, a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continued prosecution application. Where an application is filed under § 1.53(b)(3) without a statement requesting deletion of the names of any person or persons named in the prior application, the application will be treated as naming as inventors the person or persons named in the prior application, taking into account any grant of a petition correcting inventorship in the prior application pursuant to § 1.48. To correct the inventorship in the continued prosecution application, the Office will not require a petition pursuant to § 1.48 as the application is to be filed without a newly executed oath or declaration, but will require only a newly executed oath or declaration naming the correct inventorship in the continued

prosecution application, which is similar to the requirements for correction of the inventorship in applications filed under § 1.53(b)(1) without a newly executed oath or declaration.

Section 1.53(b)(3)(iv), as proposed, would require that any new change be made in the form of an amendment to the prior application, and would provide that any new specification filed with the request for an application under § 1.53(b)(3) would not be considered part of the original application papers, but would be treated as a substitute specification in accordance with § 1.125. In the event that legislation mandating the 18-month publication of patent applications (*e.g.*, H.R. 1733) is enacted, it will be necessary to amend proposed § 1.53(b)(3)(iii) to require a substitute specification in compliance with § 1.125 and drawings including only those changes to the prior application during the prosecution of the prior application.

Section 1.53(b)(3)(v), as proposed, would provide that the filing of a continued prosecution application will be construed to include a waiver of confidence by the applicant under 35 U.S.C. 122 to the extent that any member of the public who is entitled under the provisions of § 1.14 to access to, or information concerning either the prior application or any application filed under the provisions of § 1.53(b)(3) may be given similar access to, or similar information concerning, the other application(s) in the file wrapper.

Section 1.53(b)(3)(vi) (A) through (D), as proposed, would provide that the applicant is urged to furnish in the request for an application under § 1.53(b)(3) the following information relating to the prior application to the best of his or her ability: (A) Title as originally filed and as last amended, (B) name of applicant as originally filed and as last amended, (C) current correspondence address of applicant, and (D) identification of prior foreign application and any priority claim under 35 U.S.C. 119.

Section 1.53(b)(3)(vii), as proposed, would provide that envelopes containing only requests and fees for filing an application under § 1.53(b)(3) should be marked ''Box CPA.''

Section 1.53(c), as proposed, would replace its current language with three paragraphs treating: (1) Applications found to be improper or incomplete, (2) any requests for review of a notification that an application has been found to be improper or incomplete, and (3) termination of proceedings in an application for failure to timely correct a filing error or seek review of a notification that an application has been found to be improper or incomplete.

Section 1.53(c)(1), as proposed, would specifically provide that ''[i]f any application filed under paragraph (b) of this section is found to be incomplete or improper, applicant will be so notified and given a time period within which to correct the filing error.''

Section 1.53(c)(2), as proposed, would specifically provide that ''[a]ny request for review of a notification pursuant to paragraph (c)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph,'' ''[a]ny petition under this paragraph must be accompanied by the fee set forth in § 1.17(i) in an application filed under paragraphs (b)(1) or (b)(3) of this section, and the fee set forth in § 1.17(q) in an application filed under paragraph (b)(2) of this section,'' and ''[i]n the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (c)(1) of this section will be the date the filing error is corrected.''

Section 1.53(c)(3), as proposed, would specifically provide that ''[i]f an applicant is notified of a filing error pursuant to paragraph (c)(1) of this section, but fails to correct the filing error within the given time period or otherwise timely (§ 1.181(f)) take action pursuant to paragraph (c)(2) of this section, proceedings in the application will be considered terminated'' and ''[w]here proceedings in an application are terminated pursuant to this paragraph, the application may be returned or otherwise disposed of, and any filing fees, less the handling fee set forth in § 1.21(n), will be refunded.'' Section 1.53(c)(3), as proposed would not provide that proceedings in the application will be considered terminated for failure to timely respond to a notification that the original application papers lack a portion of the specification or drawing(s). Thus, the failure to timely seek review of a notification that the original application papers lack a portion of the specification or drawing(s) will not result in termination of proceedings in (or abandonment of) the application, but will simply result in such portion of the specification or drawing(s) not being considered part of the original disclosure of the application.

Section 1.53(d)(1), as proposed, would change ''paragraph (b)(1) of this section'' to ''paragraphs (b)(1) or (b)(3) of this section,'' such that § 1.53(d)(1) would be applicable to applications filed under §§ 1.53 (b)(1) and (b)(3), where § 1.53(d)(2) would be applicable to applications filed under § 1.53(b)(2) (*i.e.*, provisional applications). While § 1.53(d)(1) addresses both the filing fee and the oath or declaration, the oath or declaration of an application under § 1.53(b)(3) will be the oath or declaration of the prior complete (§ 1.51(a)(1)) application. As such, an oath or declaration will not be required under § 1.53(d)(1) for a proper application under § 1.53(b)(3).

Section 1.53(d)(1), as proposed, would be further amended to add the phrases ''including a continuation, divisional, or continuation-in-part application'' and ''pursuant to §§ 1.63 or 1.175, which may be a copy of the executed oath or declaration filed to complete (§ 1.51(a)(1)) the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c), or a copy of an unexecuted oath or declaration, and a statement that the copy is a true copy of the oath or declaration that was subsequently executed and filed to complete (§ 1.51(a)(1)) the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c), in a continuation or divisional application'' for clarity and consistency with § 1.53(b)(1). A reference to submission of a copy of a Notice to File Missing Parts would be removed.

Section 1.54(b), as proposed, would add the phrase ''unless the application is an application filed under § 1.53(b)(3).'' To minimize application processing delays in applications filed under § 1.53(b)(3), as proposed, such applications will not be processed by the Office of Initial Patent Examination as new applications.

Section 1.55 paragraph (a) would be amended to remove the requirement that the statement be verified in accordance with the proposed change to § 1.4(d)(2).

Section 1.59 would be amended: By revising the title to indicate that expungement of information from an application file would come under this section, by revising the existing paragraph and designating it as paragraph (a)(1), and by adding paragraphs (a)(2), (b) and (c). Paragraph (a)(1) would retain the general prohibition on the return of information submitted in an application which has a filing date. The portion of the paragraph relating to the Office furnishing copies of application papers has been shifted to new paragraph (c). Paragraph (a)(2) would make explicit that information, forming part of the original disclosure, i.e., written

specification, drawings, claims and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175, will not be expunged from the application file.

Paragraph (b) of § 1.59 would provide an exception to the general prohibition of paragraph (a) on the expungement and return of information and would allow for such when it is established to the satisfaction of the Commissioner that the requested expungement and return is appropriate.

Paragraph (b) of § 1.59 is intended to cover the current practice set forth in MPEP 724.05 where the submitted information has initially been identified as trade secret, proprietary, and/or subject to a protective order and where applicant may file a petition for its expungement and return that will be granted upon a determination by the examiner that the information is not material to patentability. Any such petition should be submitted in response to an Office action closing prosecution so that the examiner can make a determination of materiality based on a closed record. Any petition submitted earlier than close of prosecution may be returned unacted upon. In the event pending legislation for pre-grant publication of applications, which provides public access to the application file, is enacted, then the timing of petition submissions under this section will be reconsidered. A result of the proposed amendment to this section would be to have a petition to expunge decided under the instant rule by the examiner who determines the materiality of the information to be expunged rather than by the Office of Petitions under § 1.182, which prior to rendering a decision on the petition consults with the examiner on materiality of the information at issue.

Paragraph (b) of § 1.59 is also intended to cover information that was unintentionally submitted in an application, provided that: (i) The Office can effect such return prior to the issuance of any patent on the application in issue, (ii) that it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, (iii) the information has not otherwise been made public, (iv) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted, and (v) it is established to the satisfaction of the Commissioner that the information to be returned is not material information under § 1.56. Requests to return information that have not been clearly identified as information that may be later subject to such request by marking and placement in a separate sealed envelope or container shall be treated on a case-by-case basis. It should be noted that the Office intends to start electronic scanning of all papers filed in an application, and the practicality of expungement from the electronic file created by a scanning procedure is not as yet determinable. Applicants should also note that unidentified information that is a trade secret, proprietary, or subject to a protective order that is submitted in an Information Disclosure Statement may inadvertently be placed in an Office prior art search file by the examiner due to the lack of such identification and may not be retrievable.

Paragraph (b) of § 1.59 is also intended to cover the situation where an unintended heading has been placed on papers so that they are present in an incorrect application file. In such situation, a petition should request return of the papers rather than transfer of the papers to the correct application file. The grant of such a petition will be governed by the factors enumerated above in regard to the unintentional submission of information. Where the Office can determine the correct application file that the papers were actually intended for, based on identifying information in the heading of the papers, e.g., Application number, filing date, title of invention and inventor(s) name(s), the Office will transfer the papers to the correct application file for which they were intended without need of a petition.

Added paragraph (c) of § 1.59 retains the practice that copies of application papers will be furnished by the Office upon request and payment of the cost for supplying such copies.

Section 1.60 is proposed to be removed and reserved.

In the notice of proposed rulemaking entitled ''Changes to Implement 20-Year Patent Term and Provisional Application'' (20-Year Term Notice of Proposed Rulemaking) published in the Federal Register at 59 FR 63951 (December 12, 1994), and in the Patent and Trademark *Office Official Gazette* at 1170 *Off. Gaz. Pat. Office* 377 (January 3, 1995), § 1.60 was proposed to be removed due to the rule change to § 1.4(d), which permits the filing of a copy of an oath or declaration. The proposed removal of § 1.60 in the 20-Year Term Notice of Proposed Rulemaking, however, was withdrawn in the final rule to permit further study.

A continuation or divisional application may be filed under 35 U.S.C. 111(a) using the procedures set forth in § 1.53, by providing a copy of the prior application, including a copy of the oath or declaration in such prior application, as filed. The patent statutes and rules of practice do not require that an oath or declaration include a recent date of execution, and the Examining Corps has been directed not to object to an oath or declaration as lacking either a recent date of execution or any date of execution. This change in examining practice will appear in the next revision of the MPEP. As discussed *supra*, the applicant's duty of candor and good faith including compliance with the duty of disclosure requirements of § 1.56 is continuous and applies to the continuing application.

Sections 1.60(b)(4) and 1.62(a) currently permit the filing of a continuation or divisional application by all or by less than all of the inventors named in a prior application without a newly executed oath or declaration. To continue this practice, § 1.53 is proposed to be amended to provide that any continuation or divisional application may be filed by all or by less than all of the inventors named in a prior application, but where a newly executed oath or declaration is not submitted for a continuation or divisional application filed by less than all the inventors named in the prior application, the copy of the oath or declaration for the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c) must be accompanied by a statement requesting the deletion of the names of the person or persons who are not inventors in the continuation or divisional application. A newly executed oath or declaration will continue to be required in a continuation or divisional application naming an inventor not named in the prior application, or a continuation-in-part application.

Section 1.60 is now unnecessary due to: (1) The rule change to § 1.4(d), (2) the proposed addition of § 1.53(b)(1)(i) to expressly permit the filing of either a newly executed oath or declaration, or a copy of the executed oath or declaration filed to complete pursuant to § 1.51(a)(1) the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c), in a continuation or divisional application, (3) the proposed addition of § 1.53(b)(1)(i) to permit the filing of a continuation or divisional application by all or by less than all the inventors

named in a prior application, using a copy of the executed oath or declaration filed to complete the prior application, and (4) the proposed addition of § 1.53(b)(3) to permit the filing of a continued prosecution application.

A new application containing a copy of an oath or declaration under § 1.63 referring to an attached specification is indistinguishable from a continuation or divisional application containing a copy of an oath or declaration from a prior application submitted pursuant to § 1.53(b)(1)(i), as proposed. Unless an application is submitted with a statement that the application is a continuation or divisional application (§ 1.78(a)(2)), the Office will process such a new application without requiring a new oath or declaration. Applicants are advised to clearly designate any continuation or divisional application as such to avoid the issuance of a filing receipt that does not indicate that the application is a continuation or division.

Section 1.62 is proposed to be removed and reserved.

In the proposed rulemaking entitled ''Changes to Implement 18-Month Publication of Patent Applications'' (18-Month Publication Notice of Proposed Rulemaking) published in the Federal Register at 60 FR 42352 (August 15, 1995), and in the Patent and Trademark Office *Official Gazette* at 1177 *Off. Gaz. Pat. Office* 61 (August 15, 1995), § 1.62(e) was proposed to be amended to require a substitute specification in compliance with § 1.125 and drawings where the application filed under § 1.62 is a continuation-in-part application. The 18-Month Publication Notice of Proposed Rulemaking proposed to digital image and/or optical character recognition (OCR) scan application material into an electronic data base, which data base would be used to publish the application (*e.g.*, for producing copies of the technical contents of the application-as-filed). The 18-Month Publication Notice of Proposed Rulemaking indicated that as applications filed prior to the implementation of 18-month publication will not have been image- or OCR-scanned into the electronic data base, the technical contents of an application filed under § 1.62 in which the prior application was itself filed prior to the implementation of 18-month publication will not be contained in the electronic data base.

The solution proposed in the 18-Month Publication Notice of Proposed Rulemaking was for the Office to obtain the microfiche copy of the prior application for applications under § 1.62 which do not add additional disclosure (*i.e.*, continuation or divisional applications) and image or OCR scan it into the electronic data base, and to amend § 1.62 to provide that, where the application adds additional disclosure (*i.e.*, is a continuation-in-part application), a substitute specification in compliance with § 1.125 and drawings will be required.

The proposal in the 18-Month Publication Notice of Proposed Rulemaking to obtain the microfiche copy of prior continuation or divisional applications is now considered unfeasible. A number of applications filed under § 1.62 derive from a chain of applications filed under § 1.62. The information pertaining to such an application's chain of prior applications contained within the Patent Application Location and Monitoring (PALM) system is not sufficiently comprehensive to readily and reliably indicate the prior application that contains a specification and drawings, and is not sufficiently reliable to avoid the occasional inclusion of an unrelated application in the chain of prior applications. This could result in the inadvertent publication of the specification and drawings of the wrong application.

In addition, the microfiche copy of the prior application may be a microfiche of sheets of specification and/or drawings on 8½ by 14-inch paper, which paper size is not technically useable by the equipment which will be employed for pre-grant publication of patent applications. Attempts to reduce such sheets of specification and/or drawings to a paper size processible by pre-grant publication equipment results in electronic files which contain illegible text and figures. Moreover, the microfilming process under pre-grant publication differs from the previous microfilming process, and as such, the microfiche copy of such a prior application is sufficiently dissimilar from the microfiche copy of an application under pre-grant publication that it causes accurate technical date capture difficulties.

In the event that legislation mandating the 18-month publication of patent application is enacted, it will be necessary to require a substitute specification in compliance with § 1.125 and drawings including any changes to the prior application during the prosecution of the prior application or pursuant to § 1.62(e) to continue § 1.62 practice.

Section 1.62 is now unnecessary due to: (1) The rule change to § 1.4(d), (2) the proposed change to § 1.53(b)(1) to expressly permit the filing of either a newly executed oath or declaration, or a copy of the executed oath or declaration filed to complete pursuant to § 1.51(a)(1) the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c), in a continuation or divisional application, (3) the proposed change to § 1.53(b)(1) to permit the filing of a continuation or divisional application by all or by less than all the inventors named in a prior application, using a copy of the executed oath or declaration filed to complete the prior application, and (4) the proposed addition of § 1.53(b)(3) to permit the filing of a continued prosecution application.

The Office currently receives a number of petitions requesting that an application filed under §§ 1.60 and 1.62 be accepted even though at the time of filing of the application, the application did not comply with all the requirements of §§ 1.60 or 1.62 due to inadvertent error on the part of the applicant. The examination of these improper applications under §§ 1.60 and 1.62 is delayed until a petition to accept the application is filed and granted. The large majority of the applications filed under § 1.60, however, complied at the time of filing with the requirements of § 1.53(b)(1), and the copy of the oath or declaration from the prior application is now acceptable as the oath or declaration for the application, regardless of whether the application is an application under § 1.53 or § 1.60. The removal of § 1.60 and simplification of § 1.62 will reduce the number of these types of petitions and will simplify the procedures for filing an application for both the Office and patent practitioners.

It is anticipated that, subsequent to the removal of §§ 1.60 and 1.62, applications purporting to be applications filed under §§ 1.60 or 1.62 will be filed until the deletion of §§ 1.60 and 1.62 become well known among patent practitioners. Applications purporting to be an application filed under § 1.60 will simply be treated as a new application filed under § 1.53 (*i.e.*, the reference to § 1.60 will simply be ignored).

Applications purporting to be an application filed under § 1.62 will be treated as continued prosecution applications under § 1.53(b)(3), and those applications that do not meet the requirements of § 1.53(b)(3) (*e.g.*, continuation-in-part applications or continuations or divisional of applications filed before June 8, 1995) will be treated as improper continued prosecution applications under § 1.53(b)(3). Such improper applications under § 1.53(b)(3) may be corrected by

way of petition under § 1.53(b)(c) (and $130 fee pursuant to § 1.17(i)).

Such a § 1.53(c) petition in a continuation or divisional application will be granted on the condition that the applicant file: (1) The $130 petition fee, and (2) a true copy of the complete application designated as the prior application in the purported § 1.62 application papers as filed, or, if the prior application was an application filed under § 1.62, a true copy of its most immediate parent application which contained a specification and drawings as filed. Such a § 1.53(c) petition in a continuation-in-part application will be granted on condition that the applicant file: (1) The $130 petition fee, and (2) a true copy of the complete application designated as the prior application in the purported § 1.62 application papers as filed, or, if the prior application was an application filed under § 1.62, a true copy of its most immediate parent application which contained a specification and drawings as filed, and any amendments submitted during the prosecution of the prior application.

Section 1.63(a)(3) is proposed to be amended by requiring the post office address to appear in the oath or declaration and having the requirement from § 1.41(a) for the full names of the inventors placed therein.

Section 1.69, paragraph (b), would be amended to remove the requirement that the translation be verified in accordance with the proposed change to § 1.4(d)(2). Paragraph (b) of this section is also being amended to clarify the need for a statement that the translation being offered is an accurate translation, as is proposed for § 1.52, paragraph (a) and (d).

Section 1.78(a)(1)(ii), as proposed, would remove the references to §§ 1.60 and 62 in view of the proposed deletion of §§ 1.60 and 62.

Section 1.84, paragraph (b), is proposed to be amended by removing references to the filing of black and white photographs in design applications as unnecessary in view of the reference in § 1.152 to § 1.84(b).

Section 1.91 is proposed to be amended for clarification purposes by additionally reciting ''Exhibits'' as well as models. The section is proposed to be amended to state that a model, working model or other physical exhibit may be required by the Office if deemed necessary for any purpose in examination of the application. This language is moved from § 1.92.

Section 1.92 is proposed to be removed and reserved and the language, as stated above, transferred to § 1.91 for improved contextual purposes.

Section 1.97 (c) through (e) are proposed to be amended by replacement of ''certification'' by ''statement,'' see comments relating to § 1.4(d), and by clarifying the current use of ''statement'' by the terms ''information disclosure.'' Section 1.97(e)(2) is further amended to replace ''or'' by ''and'' to require that: No item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application and that no item of information contained in the information disclosure statement to the knowledge of the person signing the statement, after making reasonable inquiry, was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement. The use of ''and'' rather than ''or'' is in keeping with the intent of the rule as expressed in the MPEP 609, page 600–91, that the conjunction be conjunctive rather than disjunctive. The mere absence of an item of information from a foreign patent office communication was clearly not intended to represent an opportunity to delay the submission of the item when known more than three months prior to the filing of an information disclosure statement to an individual having a duty of disclosure under § 1.56.

Section 1.101 is proposed to be removed and reserved as relating to internal Office instructions.

Section 1.102, paragraph (a), would be amended to remove the requirement that the showing be verified in accordance with the proposed change to § 1.4(d)(2).

Section 1.103, paragraph (a), would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.104 is proposed to be removed and reserved as relating to internal Office instructions (the material of paragraph (c) would be present in the MPEP).

Section 1.105 is proposed to be removed and reserved as relating to internal Office instructions.

Section 1.108 is proposed to be removed and reserved as relating to internal Office instructions.

Section 1.111(b) is proposed to be amended to explicitly recognize that a reply must be reduced to a writing which must point out the specific distinctions believed to render the claims, including any newly presented claims, patentable. It is noted that an examiner's amendment reducing a telephone interview to writing would comply with § 1.2.

In § 1.112 it is proposed to remove as being unnecessary the statement that ''any amendments after a second Office action must ordinarily be restricted to the rejection, objections or requirements made in the office action'' to reflect actual practice wherein an unrestricted right of entry exists prior to a final rejection and that an application or patent under reexamination be considered repeatedly unless a final action is rendered. It is proposed to amend the section for clarification purposes by addition of a reference to reconsideration ''before final action.''

Section 1.113(a), as proposed, would add ''by the examiner'' after ''examination or consideration,'' change ''objections to form'' to ''objections as to form'' for clarity, and would replace ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.113(b), as proposed, would change ''clearly stating the reasons therefor'' to ''clearly stating the reasons in support thereof'' for clarity.

A new § 1.113(c) would be added to provide that the first action in an application will not be made final. See comments to §§ 1.116 and 1.191.

Section 1.115 is proposed to be replaced by new § 1.115 that would contain material to be deleted from §§ 1.117 through 1.119, 1.123 and 1.124. No change in substance is contemplated with the material of deleted sections being rearranged and edited for clarity and contextual purposes in the new section. The reference to ''application'' is intended to include reissue applications.

Section 1.116(a), as proposed, would limit amendments after a final rejection or other final action (§ 1.113) to those amendments cancelling claims or complying with any requirement of form set forth in a previous Office action, and would replace the phrase ''any proceedings relative thereto'' with ''any related proceedings'' for clarity.

Section 1.116(b), as proposed, would provide that any amendment not in compliance with § 1.116(a) must be submitted with a request for an application under § 1.53(b)(3) to ensure consideration of the amendment.

Under § 1.116, as proposed, amendments after final rejection or other final action would be limited to cancelling claims or complying with any requirement of form expressly set forth in a previous Office action. Currently, amendments after final which concern the merits of an application may, upon a showing of good and sufficient reasons why they are necessary and were not earlier presented, be entered and amendments after final which present rejected claims

in better form for consideration on appeal may be entered. This procedure causes delays in the ultimate issuance of the application as a patent, since applicants will await a ruling on whether such amendment will be entered prior to deciding whether to obtain the entry of such amendment through the filing of a continuing application. In addition, the expedited handling of numerous amendments after final, and the expedited consideration of whether there is an adequate showing of good and sufficient reasons why an amendment after final concerning the merits of an application is necessary and not earlier presented, or whether an amendment after final presents rejected claims in better form for consideration on appeal, places a significant burden on Office resources.

Section 1.113(c), as proposed, would eliminate first action final practice, and, as such, would eliminate the necessity to submit an amendment after final simply to avoid a first action final in a continuing application. In view of this safeguard, and the delay and burden of the current practice for the treatment of amendments after final, § 1.116 is proposed to be amended to limit those amendments that may be presented as a matter of right after a final rejection or other final action. Put simply, the proposed elimination of first action final practice by the Office is the *quid pro quo* for the proposed strict limitation of after final practice. Persons submitting comments objecting to this proposed limitation of after final practice should frame such comments in the context that the proposed elimination of first action final practice by the Office is coupled to the proposed limitation of after final practice.

Section 1.116, as proposed, would not affect the authority of an examiner to enter in an application under final an amendment that places the application in condition for allowance, but does not strictly meet the requirements of § 1.116(a). That is, in instances in which the applicant and examiner agree on an amendment that would place the application in condition for allowance, the examiner would retain the authority to enter the amendment, notwithstanding the requirements of § 1.116(a). Where, however, the applicant and the examiner do not agree on whether an amendment would place an application in condition for allowance, and the amendment does not meet the requirements of § 1.116(a), the applicant could not require the examiner to consider the amendment as a matter of right.

Section 1.117 is proposed to be removed and reserved as the subject matter was transferred to proposed § 1.115.

Section 1.118 is proposed to be removed and reserved and its subject matter transferred to proposed § 1.115.

Section 1.119 is proposed to be removed and reserved and its subject matter transferred to proposed § 1.115.

Section 1.121 paragraphs (a) through (f) are proposed to be replaced with paragraphs (a) through (c), which separately treat amendments in non-reissue applications (paragraph (a)), amendments in reissue applications (paragraph (b)) and amendments in reexamination proceedings (paragraph (c)). Paragraphs (a) and (b) each separately treat amendment of the specification (paragraphs (a)(1) and (b)(1)) and of the claims (paragraphs (a)(2) and (b)(2)). In comparing amendment practice to the specificat′ion for non-reissue and reissue applications: When making an amendment to the specification of a non-reissue application a copy of all previous amendments would not be required, whereas for reissue applications a copy of all previous amendments to the patent specification would be required. In comparing amendment practice to the claims for non-reissue and reissue applications: When making an amendment to the claims of a non-reissue application or when new claims are added, a copy of all pending claims, including original claims that have never been amended, would be required, whereas for reissue applications a copy of only claims that are being amended or added would be required.

Paragraph (a) of § 1.121 would relate to amendments in non-reissue applications and retains a reference to § 1.52. Paragraph (a)(1) would relate to the manner of making amendments in the specification other than in the claims. Paragraph (a)(1)(i) would require the precise point to be indicated where an amendment is made. Paragraph (a)(1)(ii) would allow amendments that are deletions only to be done by a direction to cancel rather than presenting the sentence(s), paragraph(s) and/or page(s) with brackets. This should be compared to cancellation of material from the patent specification in a reissue application (paragraph (b)((1)((ii)) or in a reexamination proceedings (§ 1.530(d)(1)(ii)—by way of a copy of the rewritten material). Paragraph (a)(1)(iii) would require all other amendments, such as additions or deletions mixed with additions, to be made by submission of a copy of the rewritten sentence(s), paragraph(s) and/or page(s) to permit the examiner to more readily recognize the changes that are being made. Current practice does not require the marking of an amendment to the specification in non-reissue applications. A change in one sentence, paragraph or page that results in only format changes to other pages not being amended are not to be submitted. Paragraph (a)(1)(iv) would identify the type of markings required by paragraph (a)(1)(iii), single underlining for added material and single brackets for material deleted. The marking would also be required to be applied in reference to the material as previously rewritten and not as originally presented if that differed from the previous presentation.

Paragraph (a)(2) of § 1.121 would relate to the manner of making amendments in the claims of a non-reissue application. Paragraph (a)(2)(i)(A) would permit cancellation of a claim by a direction to do so or by simply omitting a copy of the claim when a complete copy of all pending claims are presented pursuant to paragraph (a)(2)(ii) of this section. Paragraph (a)(2)(i)(B) would permit amendment of a previously submitted claim, other than mere cancellation by submission of a copy of the claim completely rewritten with markings pursuant to paragraph (a)(2)(iii) of this section rather than continuing to permit requests that the Office hand-enter changes of five or less words, § 1.121(c)(2). Such rewriting would be construed as a direction that the rewritten claim be a replacement for the previously submitted claim. Paragraph (a)(2)(i)(C) sets forth that a new claim may only be added by the submission of a clean copy of the new claim.

Paragraph (a)(2)(ii) of § 1.121 would require that when a previously submitted claim is amended, or when a new claim is added, applicant must submit a separate copy of all pending claims to include all newly rewritten claims, all newly added claims, all previously rewritten claims that are still pending and any unamended claims that are still pending. This would enable the examiner to more quickly identify the claims that must be reviewed for the next Office action and would enable the printer to have a current version of the allowed claims for printing should the application be allowed. Compare with amendment of claims in reissue applications wherein only a copy of an amended patent claim or added claim is required, paragraph (b)(2)(i)(A) of this section, but not of previous claims (patent and added claims) that are not currently being amended. Current practice does not require a complete copy of all pending claims but only those claims being amended or added.

Paragraph (a)(2)(iii) of § 1.121 would identify the type of marking required by paragraph (a)(2)(i)(B), single underlining for added material and single brackets for material deleted.

Paragraph (a)(2)(iv) of § 1.121 would provide that the failure to submit a copy of any previously submitted claim would be construed as a direction to cancel that claim.

Paragraph (a)(3) of § 1.121 would clarify that amendments to the original application drawings for non-reissue applications are not permitted and are to be made by way of a substitute sheet for each original drawing sheet that is to be amended.

Paragraph (a)(4) of § 1.121 would require that any amendment presented in a substitute specification must be presented under the provision of this section either prior to or concurrent with the submission of the substitute specification.

Paragraph (b) of § 1.121 would apply to amendments in reissue applications. Paragraph (b)(1) of § 1.121 would relate to the manner of making amendments to the specification other than in the claims in reissue applications. Paragraph (b)(1)(i) would require the precise point to be indicated where an amendment is made. Paragraph (b)(1)(ii) would require that all amendments including deletions be made by submission of a copy of the rewritten paragraph(s) with markings. A change in one sentence, paragraph or page that results in only format changes to other pages not being amended are not to be submitted. Compare to amendments to the specification other than in the claims of non-reissue applications wherein deletions are permitted, paragraph (a)(1)(ii) of this section. Paragraph (b)(1)(iii) sets forth that each amendment to the specification must include all amendments to the specification relative to the patent as of the date of the submission. Compare to amendments to the specification other than claims in nonreissue applications wherein previous amendments to the specification are not required to accompany the current amendment to the specification, paragraph (a)(1)(iii). Paragraph (b)(1)(iv) would define the marking set forth in paragraph (b)(1)(ii) of section.

Paragraph (b)(2) of § 1.121 would relate to the manner of making amendments to the claims in reissue applications. Paragraph (b)(2)(i)(A) of § 1.121 would require the entire text of each patent claim that is being amended and of each added claim rather than continuing to permit requests that the Office hand-enter changes of five or less words, § 1.121(c)(2), but not of all pending claims, such as patent claims that have not been amended. Compare paragraph (a)(2)((ii). Additionally, provision would be made for the cancellation of a patent claim by a direction to cancel without the need for marking by brackets. Paragraph (b)(2)(i)(B) would require that patent claims not be renumbered. Paragraph (b)(2)(i)(C) would identify the type of marking required by paragraph (b)(2)(i)(A), single underlining for added material and single brackets for material deleted.

Paragraph (b)(2)(ii) of § 1.121 would require that each amendment submission set forth the status of all patent claims and all added claims as of the date of the submission, as not all claims (non-amended claims) are to be presented with each submission, paragraph (b)(2)(iv). The absence of submission of the claim status would result in an incomplete response, 35 U.S.C. 135.

Paragraph (b)(2)(iii) of § 1.121 would require that each claim amendment be accompanied by an explanation of the support in the disclosure of the patent for the amendment. The absence of an explanation would result in an incomplete response, 35 U.S.C. 135.

Paragraph (b)(2)(iv) of § 1.121 would require that each submission of an amendment to any claim (patent claim or added claim) requires copies of all amendments to the claims as of the date of the submission. A copy of a previous amendment would not meet the requirement of this section in that all amendments must be represented, as only the last amendment will be used for printing.

Paragraph (b)(2)(v) of § 1.121 would provide that the failure to submit a copy of any added claim would be construed as a direction to cancel that claim.

Paragraph (b)(2)(vi) of § 1.121 would clarify that: (1) No reissue patent would be granted enlarging the scope of the claims unless applied for within two years from the grant of the original patent (additional broadening outside the two-year limit is appropriate as long as some broadening occurred within the two-year period), and (2) no amendment may introduce new matter or be made in an expired patent.

Paragraph (b)(3) of § 1.121 clarify that amendments to the patent drawings are not permitted and that any change must be by way of a new sheet of drawings with the amended figures being identified as ''amended'' and with added figures identified as ''new'' for each sheet that has changed.

Paragraph (c) of § 1.121 would clarify that amendments in reexamination proceedings are to be made in accordance with § 1.530.

Section 1.121 as applied both to non-reissue and reissue applications does not provide for replacement pages whereby a new page would be physically substituted for a currently existing page. However, an applicant can direct that Page _____ be cancelled and the following inserted in its place. The wide availability of word processing should enable applicants to more easily submit updated material providing greater accuracy and thereby eliminating the need for the Office to hand-enter amendments. To that end, § 1.125 is proposed to be amended to provide that a substitute specification may be submitted at any point up to payment of the issue fee as a matter of right.

The proposed changes to § 1.121 relate in part to the method of presenting amendments in reissue and reexamination proceedings, that would more closely parallel each other. The Office seeks guidance on the usefulness of bringing reissue and reexamination proceedings in closer harmony. Currently, both practitioners and Office personnel must retain a working knowledge of these infrequently used but vital avenues for review of an issued patent. The Office has identified the following areas for possible harmonization and would like comments as to the appropriateness of these areas, identification of other suitable areas for consideration and specific means to achieve harmonization in the identified areas, e.g., whether a concept or practice in one area should be applied to the other area or a new practice for both should be started:

—Procedures for amending claims and the specification, § 1.121

—To utilize a reissue certificate (similar to a reexamination certificate) attached to a copy of the original patent as the reissued patent. This procedure would eliminate the need to reprint the entire reissued patent.

—Whether the special dispatch provisions of re-examination should be applied to reissue applications.

Section 1.122 is proposed to be removed and reserved as representing internal Office instruction.

Section 1.123 is proposed to be removed and reserved and its subject matter transferred to proposed § 1.115 for better context.

Section 1.124 is proposed to be removed and reserved and its subject matter transferred to proposed § 1.115 for better context.

Section 1.125 is proposed to be amended by addition of paragraphs (a)

through (d). Paragraph (a) would retain the current practice that a substitute specification may be required by the examiner and would be clarified to note that if the legibility of the application papers shall render it difficult to consider the case, the Office may require a substitute specification.

Paragraph (b) of § 1.125 would provide for the right of filing a substitute specification in an application other than a reissue application, at any point up to payment of the issue fee, if it is accompanied by a statement that the substitute specification includes no new matter and does not introduce any amendments unless they have been submitted in accordance with the requirements of § 1.121(a) either prior to or concurrent with the submission of the substitute specification. In view of the proposed continued prosecution application under § 1.53(b)(3) and the need to submit sentence, paragraph, and/or page changes under § 1.121(a), liberalization of the substitute specification requirements is desirable. The requirement for a lack of new matter statement being verified would be deleted. See comments to § 1.4(d).

Paragraph (c) of § 1.125 would clarify that a substitute specification is to be submitted without markings as to amended material.

Paragraph (d) of § 1.125 would not permit a substitute specification in reissue or reexamination proceedings as markings for changes from the patent are required therein.

Section 1.133, paragraph (b), would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.134 would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.135, paragraphs (a) and (c), would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111. Paragraph (b) is proposed to be amended to clarify that the admission of or refusal to admit any amendment after final rejection, and not just an amendment not responsive to the last Office action, shall not operate to save the application from abandonment.

Section 1.135, paragraph (c), is proposed to be amended to provide that a new ''time period'' under § 1.134 may be given if a reply to a non-final Office action is substantially complete but consideration of some matter or compliance with some requirement has been inadvertently omitted. This would replace the current practice whereby applicant may be given an opportunity to supply the omission through the setting of a ''time limit'' of one month that is not currently extendable. Generally, a new one month shortened statutory time period would be utilized enabling an applicant to petition for extensions of time under § 1.136(a). Where 35 U.S.C. 133 requires a period longer than one month, *i.e.*, actions mailed in the month of February, a shortened statutory period of 30 days will be set. The setting of a time period for reply under § 1.134 rather than a time limit would result in the date of abandonment (when no further reply is filed) being the expiration of the new time period rather than, at present, the date of expiration of the period of reply set in the original Office action for which an incomplete reply was filed. Thus, the proposed amendment to paragraph (c) of § 1.135 would permit the refiling of a continuing application as an alternative to completing the reply, whereas the current rule only permits an applicant to complete the reply that was held to be incomplete.

Section 1.135, paragraph (c), is also proposed to be amended to remove an unnecessary reference to consideration of the question of abandonment and to clarify that the reply for which applicant may be given a new time period to reply to must be a ''non-final'' Office action.

Section 1.136, paragraph (a)(1), is proposed to be amended to recite the availability of a maximum of five (5) rather than four (4) months as an extension of time when only a one (1) month or 30 day shortened statutory period or a non-statutory period for reply is set. Paragraph (a)(1) is would also be amended by replacement of ''respond'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.136, paragraph (a)(2), would be amended by replacement of ''respond'' with ''reply'' in accordance with the proposed change to § 1.111 and other clarification changes.

Section 1.136 is proposed to be amended by addition of paragraph (a)(3) that would now provide for the filing in an application a general authorization to treat any reply requiring a petition for an extension of time for its timely submission as containing a request therefor for the appropriate length of time. The authorization may be filed at any time prior to or with the submission of a reply that would require an extension of time for its timely submission, including submission with the application papers. Currently, the mere presence of a general authorization, submitted prior to or with a reply requiring an extension of time, to charge all required fees does not amount to a petition for an extension of time for that reply (MPEP 201.06 and 714.17) and under the proposed amended rule the submission of a reply requiring an extension of time for its timely submission would not be treated as an inherent petition for an extension of time absent an authorization for all necessary extensions of time. The Office will continue to treat all petitions for an extension of time as requesting the appropriate extension period notwithstanding an inadvertent reference to a shorter period for extension and will liberally interpret comparable papers as petitions for an extension of time. Applicants are advised to file general authorizations for payment of fees and petitions for extensions of times as separate papers rather than as sentences buried in papers directed to other matters (such as an application transmittal letter). The use of individual papers directed only to an extension of time or to a general authorization for payment of fees would permit the Office to more readily identify the presence of such items and list them individually on the application file jacket thereby providing ready future identification of these authorizations.

Clarifying language is proposed for § 1.136(a)(3) to reflect current practice that general authorizations to charge fees are effective to meet the requirement for the extension of time fee for responses filed concurrent or subsequent to the authorization. However, a general authorization to charge additional fees does not represent a petition for an extension of time, which petition must be separately requested.

Section 1.137 is proposed to be amended by moving language presently codified, elsewhere to, *inter alia*, incorporate revival of abandoned applications and lapsed patents for the failure: (1) To timely reply to an Office requirement in a provisional application (§ 1.139), (2) to timely pay the issue fee for a design application (§ 1.155 paragraphs (b)–(f)), (3) to timely pay the issue fee for a utility or plant application (§ 1.316 paragraphs (b)–(f)), or to timely pay the full amount of the issue fee (§ 1.317 paragraphs (b)–(f)) (lapsed patents). Cites in parentheses reference where subject matter is contained in current rules.

Section 1.137(a), as proposed, would further move into paragraph (a)(3) the requirement that a petition thereunder be ''promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment.'' 35 U.S.C. 133 requires that ''it be shown * * * that such delay was unavoidable.'' This

requirement is regarded as requiring not only a showing that the delay which resulted in the abandonment of the application was unavoidable, but also a showing of unavoidable delay from the time an applicant becomes aware of the abandonment of the application until the filing of a petition to revive. *See In re Application of Takao* 17 USPQ2d 1155 (Comm'r Pat. 1990). The burden of continuing the process of presenting a grantable petition in a timely manner likewise remains with the applicant until the applicant is informed that the petition is granted. *Id.* An applicant seeking to revive an ''unavoidably'' abandoned application is expected to cause a petition under § 1.137(a) to be filed without delay (*i.e.*, promptly upon becoming notified, or otherwise becoming aware, of the abandonment of the application). As such, the placement of the requirement that a petition pursuant to § 1.137(a) be filed promptly upon becoming notified, or otherwise becoming aware, of the abandonment of the application is appropriately located in paragraph (a)(3), since § 1.137(a)(3) includes the requirement for a showing of unavoidable delay.

The requirement that an applicant seeking to revive an application as ''unavoidably'' abandoned ''promptly'' file a petition under § 1.137 is regarded as a requirement that a petition pursuant to § 1.137(a) be filed without delay upon the applicant or his or her representative being notified of, or otherwise becoming aware of, the abandonment. Thus, under the current and proposed practice, the failure to file a petition under § 1.137(a) within three months of the date the applicant or his or her representative is notified of, or otherwise becomes aware of, the abandonment would generally be regarded as a failure to ''promptly'' file a petition pursuant to § 1.137.

Providing a time period based upon the date of abandonment during which a petition pursuant to § 1.137(b) must be filed to be timely, but providing no comparable time period within which a petition pursuant to § 1.137(a) must be filed to be timely, results in the misapplication of § 1.137 on the part of practitioners, which in turn results in an inordinate administrative burden to the Office. The Office is proposing to either: (1) Eliminate the time period requirement for filing a petition pursuant to § 1.137(b), or (2) provide comparable time period requirements for filing either a petition pursuant to § 1.137(a) and/or § 1.137(b), which time period will be based upon the date of the first Office notification that the application had become abandoned or that the patent had lapsed. Interested persons are advised to comment on each of these proposals, since, depending upon further consideration by the Office and the comments received in response to this notice of proposed rulemaking, either proposal may be adopted in the final rule.

Providing the period of ''within one year of the date on which the application became abandoned'' as the period during which a petition under § 1.137(b) may be timely filed has had the undesirable effect of inducing applicants, or their representatives, to delay the filing of a petition under § 1.137(b) until the end of this one year period. This deliberate delay in filing a petition under § 1.137(b), or use of this one year period as an extension of time, is considered an abuse of § 1.137(b). *See In re Application of S.*, 8 USPQ2d 1630, 1632 (Comm'r Pats 1988). In addition, § 1.137(b) was recently amended to require that any petition thereunder include a statement that the delay (*i.e.*, the entire delay), and not merely the abandonment, was unintentional. See *Final Rule*, ''Changes in Procedures for Revival of Patent Applications and Reinstatement of Patents,'' published in the Federal Register at 58 FR 44277 (August 20, 1993) and in the Patent and Trademark Office *Official Gazette* at 1154 *Off. Gaz. Pat Office* 4 (September 14, 1993). As such, any intentional delay in filing a petition under § 1.137(b) is prohibited by the current terms of the rule.

Under current rules, in instances in which an applicant, or his or her representative, intentionally delays the filing of a petition under § 1.137(b) until the end of this one year period, but files a petition under § 1.137(b) within this one year period, the petition is timely under § 1.137(b)(4), but the statement that ''the delay was unintentional'' is not appropriate.

In instances in which the filing of a petition under § 1.137(b) is intentionally delayed until the end of this one year period, and the applicant, or his or her representative, miscalculates the actual date of abandonment, or otherwise misdockets the end of this one year period, the statement that ''the delay was unintentional'' is likewise not appropriate, but the petition is also barred by the terms of the rule. In addition, subsequent petitions under § 1.137(a) are, regardless of the original cause of the abandonment, barred due to the applicant's failure to cause a petition under § 1.137(a) to be ''promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment.'' *See Application of S.*, 8 USPQ2d at 1632.

Where the applicant deliberately permits an application to become abandoned (*e.g.*, due to a conclusion that the claims are unpatentable (*e.g.*, that a rejection in an Office action cannot be overcome), or that the invention lacks sufficient commercial value to justify continued prosecution), the abandonment of such application is considered a deliberately chosen course of action, and the resulting delay cannot be considered ''unintentional'' within the meaning of 37 CFR 1.137(b). *See In re Application of G.*, 11 USPQ2d 1378, 1380 (Comm'r Pat. 1989). Likewise, where the applicant deliberately chooses not to either seek or persist in seeking the revival of an abandoned application, the resulting delay in seeking revival of the application cannot be considered ''unintentional'' within the meaning of 37 CFR 1.137. The correctness or propriety of the rejection, or other objection, requirement, or decision, by the Office, the appropriateness of the applicant's decision to abandon the application or to not seek or persist in seeking revival, or the discovery of new information or evidence, or other change in circumstances subsequent to the abandonment or decision not to seek or persist in seeking revival, are immaterial to such intentional delay caused by the deliberate course of action chosen by the applicant.

The intentional abandonment of an application, or an intentional delay in seeking either the withdrawal of a holding of abandonment in or the revival of an abandoned application, precludes a finding of unavoidable or unintentional delay pursuant to § 1.137. *See In re Maldague*, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988).

Proposed Elimination of the Time Period Requirement for Filing a Petition Pursuant to § 1.137(b)

Under this proposal, an intentional delay in the filing of a petition under § 1.137(b) will not result in an untimely petition pursuant to § 1.137(b). The statement that ''the delay was unintentional,'' however, will continue to be inappropriate. That is, where there is an intentional delay in the filing of a petition under § 1.137(b), the statement that ''the delay was unintentional'' will continue to be inappropriate (*i.e.*, the applicant, or his or her representative cannot properly make this statement, and thus cannot properly request revival of the application), but § 1.137(b) would no longer include an additional time period requirement. It is anticipated that the effects of prosecution delay due to abandonment on patent term under Public Law 103–465, and the proposed

changes to § 1.137(c), will eliminate any incentive to intentionally delay the revival of an abandoned application.

An applicant, assignee, or his or her representative, desiring the revival of an application that has inadvertently or unintentionally become abandoned is expected to act without intentional delay in seeking revival of the application. The Office does not question whether there has been an intentional or otherwise impermissible delay when a petition pursuant to § 1.137 is filed within three months of the date the applicant is first notified by the Office that the application is abandoned. Where, however, there is a greater delay between the date the applicant is first notified by the Office that the application is abandoned and the filing of a petition pursuant to § 1.137(b), the Office may raise the question as to whether the delay was unintentional, and may require more than a mere statement that the delay was unintentional. The Office may question whether the delay was unintentional in instances in which an applicant fails to timely seek reconsideration of a decision refusing to revive an abandoned application (see § 1.137(d)).

Regardless of whether the time period requirement in § 1.137(b) is eliminated, applicants seeking revival of an abandoned application are advised to file a petition pursuant to § 1.137 within three months of first notification that the application is abandoned to avoid the question of intentional delay being raised by the Office or third parties seeking to challenge any patent issuing from the application.

While this proposal would permit revival pursuant to § 1.137(b) without regard to the period of abandonment, § 1.137(a) currently permits revival pursuant thereto without regard to the period of abandonment. In addition, the Office currently entertains petitions pursuant to § 1.183, albeit under strictly limited conditions, to waive the time period requirement in § 1.137(b). Since an application may currently be revived pursuant to § 1.137 without regard to the period of abandonment, any current reliance upon the period of abandonment to ensure that the application will never issue as a patent is misplaced. Thus, the proposed elimination of the time period requirement in § 1.137(b) would not significantly decrease the relationship between the period of abandonment of an application and the likelihood that such application would ever issue as a patent.

In the event that the proposed elimination of the time period requirement for filing a petition pursuant to § 1.137(b) is adopted, public comment is also requested on the application of this rule change to applications that were abandoned prior to the effective date of this rule change. This provision could be made effective as to petitions filed on or after the effective date of the rule change, which would permit the revival pursuant to § 1.137(b) of applications abandoned for extended periods of time, provided that the entire delay was unintentional. This provision could also be made effective as to applications abandoned on or after the effective date, with the provisions of current § 1.137(b) being applied to applications abandoned prior to the effective date of the rule change. This provision could also be made effective as to applications abandoned within and/or having a petition to revive filed within a specified period preceding the effective date of the rule change.

Proposed Comparable Time Period Requirements Each of §§ 1.137 (a) and (b) Based Upon the Date of the First Office Notification That the Application Had Become Abandoned or That the Patent Had Lapsed

The Office is also considering amending each of §§ 1.137 (a) and (b) to include an express requirement that a petition thereunder be filed within a time certain. Specifically, the Office is also considering amending § 1.137(a) to include the express requirement that a petition thereunder be filed within three months of the date of the first Office notification that the application had become abandoned or that the patent had lapsed and amending § 1.137(b) to include the requirement that a petition thereunder be filed within three months of the date of the first Office notification that the application had become abandoned or that the patent had lapsed, or within three months of the date of the first decision on a timely petition pursuant to § 1.137(a).

The ''promptly filed'' requirement in § 1.137(a) is the subject of various interpretations by applicants seeking revival pursuant to § 1.137(a). To avoid misunderstandings as to the timeliness with which the Office expects an applicant seeking revival pursuant to § 1.137(a) to file a petition thereunder, the Office is considering amending § 1.137(a) to include the express requirement that a petition thereunder be filed within a time certain. Providing a period during which a timely petition pursuant to § 1.137 (a) and/or (b) may be filed based upon the date of the first Office notification that the application had become abandoned or that the patent had lapsed, rather than the date of abandonment or patent lapse, is considered a better measure of timeliness. In addition, providing such a period will reduce uncertainty as to the expiration of the period during which a timely petition pursuant to § 1.137(b), as well as § 1.137(a), may be filed.

Therefore, the Office is also considering basing the period during which a timely petition under § 1.137 (b), as well as § 1.137(a), may be filed on the date of notification of the abandonment, rather than the date of abandonment, and considers that a period of within three months of the date of the first Office notification that the application had become abandoned or that the patent had lapsed to be the appropriate period.

Under the appropriate circumstances, petitions under § 1.183 to waive any time period requirement in §§ 1.137(a) and/or (b) would be available. Waiver of any requirement of § 1.137 will, in accordance with § 1.183, be strictly limited to an ''extraordinary situation'' in which ''justice requires'' such waiver.

Section 1.137(a)(1), as proposed, would replace the phrase ''a proposed response to continue prosecution of that application, or the filing of a continuing application, unless either has been previously filed'' with ''accompanied by the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the proposed reply requirement may be met by the filing of a continuing application. In an abandoned application or a lapsed patent, for failure to pay any portion of the required issue fee, the proposed reply must be the issue fee or any outstanding balance thereof.''

Section 1.137(b)(1), as proposed, would likewise replace the phrase ''Accompanied by a proposed response to continue prosecution of that application, or filing of a continuing application, unless either has been previously filed'' with ''accompanied by the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the proposed reply requirement may be met by the filing of a continuing application. In an abandoned application or a lapsed patent, for failure to pay any portion of the required issue fee, the proposed reply must be the issue fee or any outstanding balance thereof.''

While the revival of applications abandoned for failure to timely prosecute and for failure to timely pay the issue fee are proposed to be incorporated together in § 1.137, the statutory provisions for the revival of an application abandoned for failure to timely prosecute and for failure to

timely submit the issue fee are mutually exclusive. *See Brenner* v. *Ebbert,* 398 F.2d 762, 157 USPQ 609 (D.C. Cir.), *cert. denied* 393 U.S. 926, 159 USPQ 799 (1968). 35 U.S.C. 151 authorizes the acceptance of a delayed payment of the issue fee, if the issue fee ''is submitted * * * and the delay in payment is shown to have been unavoidable.'' 35 U.S.C. 41(a)(7) likewise authorizes the acceptance of an ''unintentionally delayed payment of the fee for issuing each patent.'' Thus, 35 U.S.C. 41(a)(7) and 151 each require payment of the issue fee as a condition of reviving an application abandoned or patent lapsed for failure to pay the issue fee. Therefore, the filing of a continuing application without payment of the issue fee or any outstanding balance thereof is not an acceptable proposed reply in an application abandoned or patent lapsed for failure to pay any portion of the required issue fee.

The Notice of Allowance requires the timely payment of the issue fee in effect on the date of its mailing to avoid abandonment of the application. In instances in which there is an increase in the issue fee by the time of payment of the issue fee required in the Notice of Allowance, the Office will mail a notice requiring payment of the balance of the issue fee then in effect. The phrase ''for failure to pay any portion of the required issue fee'' applies to those instances in which the applicant fails to pay either the issue fee required in the Notice of Allowance or the balance of the issue fee required in a subsequent notice. In such instances, the proposed reply must be the issue fee then in effect, if no portion of the issue fee was previously submitted, or any outstanding balance of the issue fee then in effect, if a portion of the issue fee was previously submitted.

These proposed changes to §§ 1.137 (a)(1) and (b)(1) are necessary to incorporate into § 1.137 the revival of abandoned applications and lapsed patents for the failure to timely reply to an Office requirement in a provisional application, to timely pay the issue fee, or to timely pay the full amount of the issue fee.

Sections 1.137 (a) and (b), as proposed, would each include a new paragraph, paragraphs (a)(4) and (b)(4), respectively, providing that any petition thereunder must be accompanied by any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to § 1.137(c), to include in §§ 1.137 (a) and (b) an explicit reference to the terminal disclaimer requirement in § 1.137(c).

Section 1.137(c), as proposed, would change the phrase ''any petition pursuant to paragraph (a) of this section'' to ''any petition pursuant to this section.'' As the period for the timely filing of a petition under § 1.137(b) would no longer be based upon the period of abandonment, administrative convenience no longer justifies not requiring, for all design applications and all other nonprovisional utility applications filed prior to June 8, 1995, a terminal disclaimer under § 1.137(c) for all petitions pursuant to § 1.137.

In addition, the phrase ''not filed within six months of the date of abandonment of the application'' is proposed to be removed from § 1.137(c). The only justification for the current six month limitation on the terminal disclaimer requirement in § 1.137(c) is administrative convenience in treating a petition pursuant to § 1.137(a) filed within six months of the date of abandonment. Since the date of abandonment is miscalculated in a significant number of instances, this provision of § 1.137(c) leads to errors in determining when a terminal disclaimer is required pursuant to § 1.137(c), and thus leads to delays in continuing prosecution of the abandoned application. In any event, administrative convenience is no longer considered an adequate justification for the effective different treatment that would result by operation of Pub. L. 103–465 of: (1) Applications filed on or after June 8, 1995, except for design applications, and (2) applications filed prior to June 8, 1995 and all design applications.

Section 1.137(d), as proposed, would change ''application'' to ''abandoned application or lapsed patent'' to incorporate into § 1.137 the revival of lapsed patents.

Section 1.137(e), as proposed, would provide that the time periods set forth in § 1.137 may be extended under the provisions of § 1.136.

Section 1.137(f), as proposed, will expressly provide that a provisional application, abandoned for failure to timely reply to an Office requirement, may be revived pursuant to § 1.137 (a) or (b) so as to be pending for a period of no longer than twelve months from its filing date. In accordance with 35 U.S.C. 111(b)(5), § 1.137(f), as proposed, will clearly indicate that ''[u]nder no circumstances will a provisional application be regarded as pending after twelve months from its filing date.'' Sections 1.139 (a) and (b) each currently provide that a provisional application may be revived so as to be pending for a period of no longer than twelve months from its filing date, and that under no circumstances will a provisional application be regarded as pending after twelve months from its filing date.

Section 1.139 is proposed to be removed and reserved and its subject matter added to § 1.137.

Section 1.142 would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.144 is proposed to be amended for clarification purposes.

Section 1.146 is proposed to be amended for clarification purposes.

Section 1.152 is proposed to be amended by removing the prohibition against color drawings and color photographs in design applications. Section 1.152 would be amended to permit the use of color photographs and color drawings in design applications subject to the petition requirements of § 1.84(a)(2) inasmuch as color may be an integral element of the ornamental design. While pen and ink drawings may be lined for color, a clear showing of the configuration of the design may be obscured by this drafting method. New technologies, such as holographic designs, fireworks and laser light displays may not be accurately disclosed without the use of color.

The term ''article'' of § 1.152 would be replaced by the term ''design'' as 35 U.S.C. 171 requires that the claim be directed to the ''design for an article'' not the article, per se. Therefore, to comply with the requirements of 35 U.S.C. 112, first paragraph, it is only necessary that the design as embodied in the article be fully disclosed and not the article itself. The term ''must'' would be replaced by the term ''should'' to allow for latitude in the illustration of articles whose configuration may be understood without surface shading. Clarification language would be added to note that the use of solid black surfaces would be permitted for representation of the color black as well as color contrast and that photographs and ink drawings must not be combined as formal drawings in one application.

Section 1.154 paragraph (a) would be amended to clarify that a voluntary submission (see comments under § 1.152 relating to substitution of ''design'' for ''article'') may and should be made of ''a brief description of the nature and intended use of the article in which the design is embodied.'' It is current practice for design examiners, in appropriate cases, to inquire as to the nature and intended use of the article in which a claimed design is embodied. The submission of such description will allow for a more accurate initial classification, and aid in providing a proper and complete search at the time of the first action on the merits. In those

instances where this feature description is necessary to establish a clear understanding of the article in which the design is embodied, provision of the feature description would help in reducing pendency by eliminating the necessity for time consuming correspondence. Specifically, requests for information prior to first action would be avoided. Absent an amendment requesting deletion of the description it would be printed on any patent that would issue.

Sections 1.155 (b) through (f) are proposed to be removed in view of the proposed amendments to § 1.137.

Section 1.163 is proposed to be amended to remove an unnecessary and outmoded reference to a ''legible carbon copy of the original'' specification for plant applications.

Section 1.165 is proposed to be amended by removing a reference to the artistic and competent execution of plant patent drawings which is unnecessary in view of the reference to § 1.84.

Section 1.167 is proposed to be amended by removing and reserving paragraph (b) as unnecessary in view of § 1.132.

Section 1.171 would no longer require an order for a title report in reissue applications as the requirement for a certification on behalf of all the assignees under concomitantly amended § 1.172(a) obviates the need for a title report and fee therefor. Section 1.171 is also proposed to be amended by deletion of the requirement for an offer to surrender the patent, which offer is seen to be redundant in view of § 1.178.

Section 1.172 is proposed to be amended to require that all assignees establish their ownership interest by submission of evidence of the chain of title or by specifying where such evidence is recorded in the Office.

Section 1.175 relating to the content of the reissue oath or declaration (MPEP 1414), as well as §§ 1.48 and 1.324 relating to correction of inventorship in an application and in a patent, respectively, are proposed to be amended to remove the requirement for a showing of a lack of deceptive intent based on facts and circumstances. As the Office no longer investigates fraud and inequitable conduct issues and a reissue applicant's statement of a lack of deceptive intent is normally accepted on its face (*See* MPEP 1448), the current requirement in § 1.175(a)(5) that it be shown how the error(s) being relied upon arose or occurred without deceptive intent on the part of the applicant appears to be unduly burdensome upon applicants and the Office, and is proposed to be deleted. This would apply to the initially identified error(s), under paragraph (a), and any subsequently identified error(s) under paragraph (b). An initial reissue oath or declaration would be required to be filed pursuant to § 1.175(a) limited to identification of the cause(s) of the reissue, and stating generally that all errors being corrected in the reissue application at the time of filing of the oath or declaration arose without deceptive intent. The current practice under § 1.175(a)(3) and (a)(5) of specifically identifying all errors being corrected at the time of filing the initial oath or declaration would not be retained.

Paragraph (b)(1) of § 1.175 would require a supplemental reissue oath or declaration for errors corrected that were not covered by an earlier presented reissue oath or declaration, such as the initial oath or declaration pursuant to paragraph (a) of this section or one submitted subsequent thereto (a supplemental oath or declaration under this paragraph), stating generally that all errors being corrected which are not covered by an earlier presented oath or declaration pursuant to paragraphs (a) and (b) of this section arose without any deceptive intention on the part of the applicant. A supplemental oath or declaration that refers to all errors that are being corrected, including errors covered by a reissue oath or declaration submitted pursuant to paragraph (a) of this section, would be acceptable. The specific requirement for a supplemental reissue oath or declaration to cover errors sought to be corrected subsequent to the filing of an initial reissue oath or declaration is not a new practice, but merely recognition of a current requirement for a supplemental reissue oath or declaration when additional errors are to be corrected. However, the current practice of specifically identifying all supplemental errors being corrected in a supplemental reissue oath or declaration would not be retained.

A supplemental oath or declaration under paragraph (b)(1) would be required to be submitted prior to allowance. The supplemental oath or declaration may be submitted with any amendment prior to allowance, paragraph (b)(1)(i), or in order to overcome a rejection under 35 U.S.C. 251 made by the examiner where there are errors sought to be corrected that are not covered by a previously filed reissue oath or declaration, paragraph (b)(1)(ii). Any such rejection by the examiner will include a statement that the rejection may be overcome by submission of a supplemental oath or declaration, which oath or declaration states that the errors in issue arose without any deceptive intent on the part of the applicant. A supplemental oath or declaration under paragraph (b) would only be required for errors sought to be corrected during prosecution of the reissue application. Where an Office action contains only a rejection under 35 U.S.C. 251 and indicates that a supplemental oath or declaration under this paragraph would overcome the rejection, applicants are encouraged to authorize the payment of the issue fee at the time the supplemental reissue oath or declaration is submitted in view of the clear likelihood that the reissue application will be allowed on the next Office action. Such authorization will reduce the delays in the Office awaiting receipt of the issue fee. Where there are no errors to be corrected over those already covered by an oath or declaration submitted under paragraphs (a) and (b)(1) of this section, *e.g.*, the application is allowed on first action, or where a supplemental oath or declaration has been submitted prior to allowance and no further errors have been corrected, a supplemental oath or declaration under this paragraph, or additional supplemental oath or declaration under paragraph (b)(1), would not be required.

Paragraph (b)(2) would provide that for any error sought to be corrected after allowance, e.g., under § 1.312, a supplemental oath or declaration must accompany the requested correction stating that the error(s) to be corrected arose without any deceptive intent on the part of the applicant.

The quotes around lack of deceptive intent in § 1.175(a)(6) would be removed as the exact language would not be required. Section 1.175(a)(7), referencing § 1.56, is proposed to be removed as unnecessary in view of the reference to § 1.56 in § 1.63 that is also referred to by § 1.175(a). Section 1.175(b) noting the ability of applicant to file affidavits or declarations of others and the ability of the examiner to require additional information would be deleted as unnecessary in view of § 1.132 and 35 U.S.C 132. A reference to § 1.53(b) would be inserted in newly proposed § 1.175(c) to clarify that the initial oath or declaration under § 1.175(a) including those requirements under § 1.63 need not be submitted (with the specification, drawing and claims) in order to obtain a filing date.

37 CFR 1.176 would be amended to permit the Office to require restriction between claims added in a reissue application and the original patent claims, where the claims added in the reissue application are separate and distinct from the original patent claims.

This change is provided to deal with the added examination burden which results when new inventions are added via the reissue application. The Office would continue to not require restriction between original claims of the patent, i.e., between claims that were in the patent prior to filing the reissue application. In order for restriction to be required between the original patent claims and the newly added claims, the newly added claims must be separate and distinct from the original patent claims. Restriction between multiple inventions in the newly added claims would also be possible provided the newly added claims are drawn towards separate and distinct inventions.

Section 1.177 is proposed to be amended to discontinue the current practice that copending reissue applications must be issued simultaneously unless ordered otherwise by the Commissioner pursuant to petition.

Section 1.177 is proposed to be further amended by creating paragraphs (a) through (d) to clarify when multiple reissue patents may be issued and the conditions that applicant must comply with in order to have the Commissioner exercise his or her discretion and authorize issuance of multiple reissue patents. The Commissioner has discretion pursuant 35 U.S.C. 251 to permit the issuance of multiple reissue patents for distinct and separate parts of the thing patented. The Commissioner will exercise his or her statutory discretion under the limited conditions set forth in paragraph (a) of this section. Absent compliance with the provisions of paragraph (a) of this section, as defined by paragraphs (b) and (c) of this section, the Commissioner will not exercise his or her discretion under the statute and will not permit the issuance of multiple reissue applications, as is set forth in paragraph (d) of this section.

The conditions for the Commissioner to exercise his or her discretion and permit multiple reissue patents to be issued for distinct and separate parts of the thing patented set forth in paragraph (a) of this section are as follows: (1) Copending reissue applications for distinct and separate parts of the thing patented have been filed, (2) Applicant has filed in each copending reissue application a timely demand by way of petition for multiple reissue patents, (3) The required filing and issue fees for each copending reissue application have been paid, and (4) The petition for multiple reissue patents is granted prior to issuance of a reissue patent on any of the copending reissue applications.

Paragraph (b) of § 1.177 would set forth the requirements of the petition provided for in paragraph (a)(2) of this section, which requirements are: (1) A request for the issuance of multiple reissue patents for distinct and separate parts of the thing patented, (2) The petition fee pursuant to § 1.17(i), (3) An identification of the other copending reissue application(s), (4) A statement that the inventions as claimed in the copending reissue applications are distinct and separate parts of the thing patented, and (5) A showing sufficient to establish to the satisfaction of the Commissioner that the claimed subject matter of the thing patented is in fact being divided into distinct and separate parts.

The ''distinct and separate parts of the thing patented'' means two things: (1) That the thing patented is being proposed to be divided into separate parts, i.e., the claims in the original patent are being separated into different reissue applications, and (2) that the divided claims are distinct as set forth in MPEP 802.01.

Items (4) and (5) are intended to cover those situations where the Commissioner can and has determined, based on material and/or information supplied by applicant, or otherwise, that the subject matter of the thing patented is in fact being separated into parts that are distinct.

The Commissioner intends to delegate the authority for decisions on the petitions required under this section to the Group Directors of the groups where the copending reissue applications are pending.

Paragraph (c) of § 1.177 would define the timeliness requirements for submission of the petitions set forth in paragraph (a)(1) of this section. When the copending reissue applications are filed at the same time, the petitions must be filed no later than the earliest submission of the reissue oath or declaration under § 1.175(a) for any of the copending reissue applications. When the copending reissue applications are filed at different times, the petitions must be filed no later than the earliest of: (1) Payment of the issue fee for any of the copending reissue applications, or (2) submission of the reissue oath or declaration under § 1.175 in the later filed copending reissue application.

Paragraph (d) of § 1.177 sets forth that the Commissioner will not permit multiple reissue patents to be issued if the requirements of this section are not met.

It is contemplated that where the requirements of paragraphs (a) and (b) of § 1.177 are capable of being perfected, the Office will give a one-month time period for perfection, with extensions of time available under § 1.136(a). Where a first copending reissue application has issued, however, perfection would not be possible. It is not the intent of the Commissioner to provide any possibility of review by way of appeal to the Board of Patent Appeals and Interferences from his or her determination that the requirements of this section have not been complied with. Review of determinations on questions as to whether it has been established that the copending reissue applications are for distinct and separate parts of the thing patented will be by way of petition under § 1.181(a)(3) and subsequently to court as to whether the Commissioner, or his or her designate, has properly exercised the discretion provided by 35 U.S.C. 251 as is now proposed to be implemented in § 1.177.

The proposed changes are not intended to affect the type of errors that are or are not appropriate for correction under 35 U.S.C. 251, e.g., a patent granted on elected claims will not be considered to be partially inoperative by reason of claiming less than they had a right to claim and applicant's failure to timely file a divisional application is not considered to be the type of error that can be corrected by a reissue. MPEP 1402 and 1450.

Section 1.177 is also proposed to be clarified by a new more descriptive title in view of the substantive amendments and a reference to the statutory authority.

Section 1.181 is proposed to be amended by removing paragraphs (d), (e) and (g) as unnecessary and at most representing internal instructions.

Section 1.182 is proposed to be amended by providing that a petition under the section may be granted ''subject to such other requirements as may be imposed'' by the Commissioner, language similar to that appearing for petitions under § 1.183. The section would have removed as unnecessary a statement that a decision on a petition thereunder will be communicated to interested parties in writing.

Section 1.184 is proposed to be removed and reserved as representing internal instructions.

Section 1.191 would be amended, to provide for an appeal only after the claims of an applicant or a patent owner of a patent under reexamination are twice rejected, by deletion of appeal after having received a final rejection. The reference to a final rejection is deemed unnecessary in view of the proposed amendment to § 1.113 by addition of paragraph (c) prohibiting a first action final rejection. An appeal

would not then be appropriate in any application including reissue and continued prosecution (§ 1.53(b)(3)) applications or in a patent under reexamination unless that application or that patent under reexamination in which an appeal is filed has been twice rejected, particularly in view of the elimination of first action final rejections. A second rejection need not be a final rejection for an appeal to be taken as is currently the practice. However, an applicant or patent owner of a patent under reexamination would not be able to appeal after a first action rejection in a continuation, divisional or continued prosecution application as no first action would be a final rejection and the only basis to appeal would be that the claims of an applicant or patent owner of a patent under reexamination have been twice rejected in the same application or the same patent under reexamination.

Section 1.191, paragraph (a), would be amended for conformance with the language of 35 U.S.C. 134 by replacement of ''the claims of which have'' by ''whose claims have.'' Section 1.191 would also be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Sections 1.192, 1.193, 1.194, 1.196, and 1.197 are proposed to be amended to change ''the appellant'' to ''appellant'' for consistency. Paragraph (a) of § 1.192 would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.193 would be amended in its title by addition of ''and substitute brief'' to more accurately reflect the section's contents. Section 1.193 would also be amended, by revision of paragraph (a) into paragraphs (a)(1) and (a)(2) and revision of paragraph (b) into paragraphs (b)(1) and (b)(2). Paragraph (a)(1) would retain the subject matter of current paragraph (a). Paragraph (a)(2) would specifically prohibit the inclusion of a new ground of rejection in an examiner's answer.

Paragraph (b)(1) would remove the current discretion under existing paragraph (b) of this section of the examiner to enter a new ground of rejection in an examiner's answer responding to an appeal in conformance with proposed paragraph (a)(2). Paragraph (b)(1) would require the examiner to reopen prosecution to enter any new ground of rejection. Reopening of prosecution would require entering of any previously submitted paper that has been refused entry.

Paragraph (b)(1) of § 1.193 would also provide appellant with a right to file a substitute appeal brief in compliance with § 1.192 in reply to an examiner's answer where the right to file a substitute appeal brief would not be dependent upon a new point of argument being present in the examiner's answer. The current practice of permitting reply briefs based solely on a finding of a new point of argument, as set forth in current paragraph (b), would be eliminated thereby preventing present controversies as to whether a new point of argument has been made by the primary examiner. Appellant would be assured of having the last submission prior to review by the Board. Upon receipt of a substitute appeal brief the examiner would either acknowledge its receipt and entry or reopen prosecution to respond to any new issues raised in the substitute appeal brief. Should the Board desire to remand the appeal to the primary examiner for comment on the latest submission by appellant or to clarify an examiner's answer, MPEP 1211,1211.01, and 1212, appellant would be entitled to submit a substitute appeal brief in response to the reply by the examiner to the Board's inquiry, which reply would be by way of a substitute examiner's answer. The use of substitute appeal briefs and substitute examiner's answers is intended to provide the Board with a single most current paper from each party.

Paragraph (b)(2) of § 1.193 would provide that if appellant desires that the appeal process be reinstated in reply to the examiner's reopening of prosecution under paragraph (b)(1) of this section, appellant would be able to file a new appeal brief under § 1.192 and a request to reinstate the appeal. Amendments, affidavits or other new evidence would not be entered if submitted with a request to reinstate the appeal. Reinstatement of the appeal would constitute a new notice of appeal but no additional appeal fees would be required, since such fees have been previously paid. The intent of the rule change is to give appellant (rather than the examiner) the option to continue the appeal if desired (particularly under a 20 year term), or to continue prosecution before the examiner in the face of a new ground of rejection. Should an appeal brief be elected as the response to the examiner reopening prosecution based on a new ground of rejection under paragraph (b)(1) of this section, the examiner may under paragraph (a)(1) of this section issue an examiner's answer.

Section 1.194, paragraph (b), is proposed to be amended to provide that a request for an oral hearing must be filed in a separate paper.

Section 1.194, paragraph (c), is proposed to be amended to provide that appellant will be notified when a requested oral hearing is unnecessary, e.g., a remand is required.

Section 1.196, paragraphs (b) and (d), are proposed to be combined by amending paragraph (b) to specifically provide in paragraph (b) for a new ground of rejection for both appealed claims and for allowed claims present in an application containing claims that have been appealed rather than the current practice under paragraph (d) of recommending a rejection of allowed claims that is binding on the examiner. The effect of an explicit rejection of an allowed claim by the Board of Patent Appeals and Interferences is not seen to differ from a recommendation of a rejection and would serve to advance the prosecution of the application by having the rejection made at an earlier date by the Board of Patent Appeals and Interferences rather than waiting for the application to be forwarded and acted upon by the examiner. The current practice, that the examiner is not bound by the rejection should appellant elect to proceed under paragraph (b)(1) and an amendment or showing of facts not previously of record in the opinion of the examiner overcomes the new ground of rejection, is not proposed to be changed. A period of two months would now explicitly be set forth for a reply to a decision by the Board of Patent Appeals and Interferences containing a new ground of rejection pursuant to § 1.196(b), which would alter the one month now set forth for replies to recommended rejections of previously allowed claims. MPEP 1214.01, page 1200–28. Extensions of time would continue to be governed by § 1.196(f) and § 1.136(b) (and not by § 1.136(a)).

The last sentence of paragraph (b)(2) of § 1.196 would be amended to clarify that appellants do not have to both appeal and file request for reconsideration where only a reconsideration of a portion of the decision is sought in that a decision on a request for reconsideration will incorporate the earlier decision for purposes of appeal of the earlier decision for which only a partial request for reconsideration may have been filed. Additionally it is clarified that decisions on reconsideration are final unless noted otherwise in the decision in that under some circumstances it may not be appropriate to make a decision on reconsideration final as is currently automatically provided for.

Section 1.196 would have a new paragraph (d) providing the Board of Patent Appeals and Interferences with explicit authority to have an appellant

clarify the record in addition to what is already provided by way of remand to the examiner, MPEP 1211, and appellant's compliance with the requirements of an appeal brief, § 1.192(d). Paragraph (d)(1) would provide that an appellant may be required to address any matter that is deemed appropriate for a reasoned decision on the pending appeal. Such matters would include:

(1) The applicability of particular case law that has not been previously identified as relevant to an issue in the appeal,

(2) The applicability of prior art that has not been made of record, and

(3) The availability of particular test data that would be persuasive in rebutting a ground of rejection.

Paragraph (d)(2) would provide that appellant would be given a time limit within which to reply to any inquiry under paragraph (d)(1) of this section. Time limits, unlike time periods for reply, are not extendable under § 1.136(a).

Section 1.197, paragraph (b), is proposed to be amended to provide a period of two months, rather than the one month currently provided, for the single request for reconsideration or modification of the Board decision as provided for in § 1.197(b).

Section 1.291, paragraph (c), is proposed to be amended by removing the blanket limitation of one protest per protestor and would provide for a second or subsequent submission in the form of additional prior art. Mere argument that is later submitted by an initial protestor would continue not to be entered and returned unless it is shown that the argument relates to a new issue that could not have been earlier raised. MPEP 1907(b). Although, later submitted prior art would be made of record by a previous protestor without a showing that it relates to a new issue, it should be noted that entry of later submitted prior art in the file record does not assure its consideration by the examiner if submitted late in the examination process. Accordingly, initial protests should be as complete as possible when first filed.

In view of the proposed change to § 1.291(a) of this section in the 18-Month Publication Notice of Proposed Rulemaking, discussed *supra*, e.g., at § 1.62 of the preamble, limiting the filing of protests to the issuance of patents to particular time periods (none after the notice of allowance is mailed, none after two months from publication or the filing of protests with a fee during the two-month period from publication where a notice of allowance has not been mailed), the restriction of protests by number is deemed unnecessary and is recognized as ineffective in that the current rule may allow for more than one protest to be filed on behalf of a party.

Section 1.291 paragraph (c) would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.294 paragraph (b) would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.304(a)(1) is proposed to be amended to replace ''consideration'' by ''reconsideration,'' an error that resulted from mistyping when it first appeared in the Federal Register.

Section 1.312, paragraph (b), is proposed to have a reference to § 1.175(b) added in view of the proposed change in § 1.175(b) referencing § 1.312(b).

Section 1.313 is proposed to be amended by the addition of paragraph (c) informing applicants that unless written notification is received that the application has been withdrawn from issue at least two weeks prior to the projected date of issue, applicants should expect that the application will issue as a patent. Once an application has issued, the Office is without authority to grant a request under § 1.313 notwithstanding submission of the request prior to issuance of the patent.

Sections 1.316 (b) through (f) are proposed to be removed as they would be combined in proposed § 1.137.

Sections 1.317 (b) through (f) are proposed to be removed as they would be combined in proposed § 1.137.

Section 1.318 is proposed to be removed and reserved as being an internal Office instruction.

Section 1.324 is proposed to be amended by creating paragraphs (a) and (b). The requirement for factual showings to establish a lack of deceptive intent would be deleted, with a statement to that effect being sufficient, paragraph (a).

As Office practice (MPEP 1481) is to require the same type and character of proof of facts as in petitions under § 1.48(a), a showing of diligence proposed to be deleted in § 1.48 would not be continued in either § 1.48 or § 1.324, which currently follows the requirements of § 1.48. The applicability of a rejection under 35 U.S.C. 102(f)/(g) against a patent with the wrong inventorship set forth therein is deemed to provide sufficient motivation for prompt correction of the inventorship without the need for a separate requirement for diligence.

The parties set forth in 35 U.S.C. 256 are interpreted to be only the person named as an inventor or not named as an inventor through error. Accordingly, § 1.324 is proposed to be amended, paragraph (b)(1), to explicitly require a statement relating to the lack of deceptive intent only from each person who is being added or deleted as an inventor, as opposed to the current practice of requiring a statement from each original named inventor and any inventor to be added.

The current requirements for an oath or declaration under § 1.63 by each actual inventor would be replaced, paragraph (b)(2) of § 1.324, by a statement from the current named inventors who have not submitted a statement under paragraph (b)(1) of § 1.324 either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change. Not every original named inventor would necessarily have knowledge of each of the contributions of the other inventors and/or how the inventorship error occurred, in which case their lack of disagreement to the requested change would be sufficient.

Paragraph (b)(3) of § 1.324 would require the written consent of the assignees of all parties who submitted a statement under paragraph (b)(1) and (b)(2) of this section similar to the current practice of consents by the assignees of all the existing patentees. A clarification reference to § 3.73(b) has been added.

Paragraph (b)(4) of § 1.324 states the requirement for a petition fee as set forth in § 1.20(b).

Section 1.325 relating to mistakes not corrected is proposed to be removed and reserved as unnecessary in that mistakes cannot be corrected unless a basis for their correction is found.

Sections 1.351 and 1.352 are proposed to be removed and reserved as unnecessary in that they are internal instructions.

Section 1.366, paragraph (b), would have the term ''certificate'' removed as unnecessary. Paragraph (c) would be clarified by changing ''serial number'' to ''application number'' which consists of the serial number and the series code (*e.g.*, ''08/''). Paragraph (d) would have the suggested requirements for the patent issue date and the application filing date removed as unnecessary in that the patent number is sufficient to identify the file and the change parallels an intended deletion of these dates from forms PTO/SB/45 and PTO/SB/47. The term ''serial'' would be removed from paragraph (d).

Section 1.377, paragraph (c), would be amended to remove the requirement

that the petition be verified in accordance with the proposed change to § 1.4(d)(2).

Section 1.378, paragraph (d), would be amended to remove the requirement that the statement be verified in accordance with the proposed change to § 1.4(d)(2).

Section 1.425 would be amended by removing paragraph (a) and its requirement for: Proof of the pertinent facts, which relates to the lack of cooperation or unavailability of the inventor for which status is sought and by deleting paragraph (b) and its requirements for: Proof of the pertinent facts, the presence of a sufficient proprietary interest, and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage. Additionally, the requirement that the last known address of the non-signing inventor be stated would be removed. The current requirements are thought to be unnecessary in view of the need for submission of the same information in a petition under 37 CFR 1.47 during the national stage. The paragraph to be added would parallel the requirement in PCT Rule 4.15 for a statement explaining to the satisfaction of the Commissioner the lack of the signature concerned.

Section 1.484, paragraphs (d) through (f), would be amended by replacement of ''response'' and ''respond'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.485 paragraph (a) would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.488, paragraph (b), would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.492 proposed to be amended to add new paragraph (g).

Section 1.494, paragraph (c), would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.495, paragraph (c)(2), would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.510, paragraph (e), would be amended to replace a reference to § 1.121(f), in view of it proposed removal, with a reference to § 1.530(d) in view of its proposed revision.

Section 1.530 the title and paragraph (a) would be amended by replacement of ''amendment'' and ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.530, paragraph (d), would be replaced by paragraphs (d)(1) through (d)(6) removing the reference to § 1.121(f) in accordance with the proposed deletion of § 1.121(f). The manner of making amendments in reexamination proceeding under the current reexamination practice is governed by § 1.530 (d)(1) through (d)(6). Paragraph (d) would apply to proposed amendments in reexamination proceedings. Paragraph (d)(1) would be directed to the manner of proposing amendments in the specification other than in the claims. Paragraph (d)(1)(i) would require the precise point to be indicated where a proposed amendment is to be made. Paragraph (d)(1)(ii) would require that all amendments including deletions be made by submission of a copy of the rewritten paragraph(s) with markings. A change in one sentence, paragraph, or page that results in only format changes to other pages not being amended are not to be submitted. Paragraph (d)(1)(iii) would require proposed amendments to the specification to be made by rewritten relative to the patent specification and not relative to a previous proposed amendment. Paragraph (d)(1)(iv) would define the markings set forth in paragraph (d)(1)(ii).

Paragraph (d)(2) of § 1.530 would relate to the manner of proposing amendment of the claims in reexamination proceedings. Paragraph (d)(2)(i)(A) would require that a proposed amendment include the entire text of each patent claim which is proposed to be amended, but not all pending claims, such as patent claims that have not been proposed to be amended. Additionally, provision would be made for the cancellation of patent or of a proposed claim by a direction to cancel without the need for marking by brackets. Compare with deletion of claims in reissue applications where only patent claims and not added claims may be cancelled by direction, paragraph (b)(2)(i)(A). Paragraph (b)(2)(i)(B) would prohibit the renumbering of the patent claims and require that any proposed added claims follow the number of the highest numbered patent claim. Paragraph (b)(2)(i)(C) would identify the type of markings required by paragraph (d)(2)(i)(A), single underlining for added material and single brackets for material deleted.

Paragraph (d)(2)(ii) would require the patent owner to set forth the status of all patent claims, of all currently proposed claims, and of all previously proposed claims that are no longer being proposed as of the date of submission of each proposed amendment. Compare with § 1.121(b)(2)(ii), which does not require the status of patent claims that were not amended or of added claims that were cancelled.

Paragraph (d)(2)(iii) of § 1.530 would require an explanation of the support in the disclosure for any proposed first-time amendments to the claims on pages separate from the amendments along with any additional comments. The absence of an explanation would result in an incomplete reply, 35 U.S.C. 135.

Paragraph (d)(2)(iv) of § 1.530 would require that each submission of a proposed amendment to any claim (patent claims and all proposed claims) requires copies of all proposed amendments to the claims as of the date of the submission. A copy of a previous amendment would not meet the requirement of this section in that all amendments must be represented, as only the last amendment will be used for printing. A copy of a patent claim that has not been proposed to be amended is not to be presented.

Paragraph (d)(2)(v) of § 1.530 would provide that the failure to submit a copy of any proposed added claim would be construed as a direction to cancel that claim.

Paragraph (d)(3) of § 1.530 would clarify that: (1) A proposed amendment may not enlarge the scope of the claims of the patent, (2) that no amendment may be proposed in an expired patent, and (3) no amendment will be incorporated into the patent by certificate issued after the expiration of the patent.

Paragraph (d)(4) of § 1.530 would clarify that amendments proposed to a patent during reexamination proceedings will not be effective until a reexamination certificate is issued.

Paragraph (d)(5) of § 1.530 would provide the specifications that the form of papers must comply with in reexamination proceedings, e.g., paper size must be either letter size or A4 size (and not legal size).

Paragraph (d)(6) of § 1.530 would clarify that proposed amendments to the patent drawings are not permitted and that any change must be by way of a new sheet of drawings with the proposed amended figures being identified as ''amended'' and with proposed added figures identified as ''new'' for each sheet that has changed.

Section 1.550, paragraphs (a), (b), and (d), would be amended by replacement of ''response,'' ''responses'' and ''respond'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.560, paragraph (b), would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.770 would be amended by replacement of ''response'' with ''reply''

in accordance with the proposed change to § 1.111.

Section 1.785 would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 1.804, paragraph (b), would be clarified grammatically by changing ''shall state'' to ''stating'' and would be amended to delete the requirement that the statement be verified in accordance with the proposed change to § 1.4(d)(2).

Section 1.805, paragraph (c), would be amended by replacement of ''verified'' with ''statement'' in accordance with the proposed change to § 1.111 and removing unnecessary language noting that an attorney or agent registered to practice need not verify their statements.

Portions of part 3 are proposed to be amended to incorporate part 7 that is proposed to be removed and reserved.

Section 3.11(a) is proposed to be created for the current subject matter and a new paragraph (b) would be added citing Executive Order 9424 and its requirements by several departments and other executive agencies of the Government for forwarding items for recording.

Section 3.26 would be amended to remove the requirement that English language translation be verified in accordance with the proposed change to § 1.4(d)(2).

Section 3.27(a) is proposed to be added to include current subject matter and an exception for § 3.27(b) that would be added citing Executive Order 9424 and a mailing address therefor.

Section 3.31(c) is proposed to be added to require that the cover sheet must indicate that the document is to be recorded on the governmental register and if applicable that the document is to be recorded on the Secret Register and that the document will not affect title.

Section 3.41(a) is proposed to be added for the current subject matter and a § 3.41(b) added to note when no recording fee is required in § 3.41(b)(1) through (3) when it is required by Executive Order 9424.

Section 3.51 is proposed to be amended by removing the term ''certification'' as unnecessary in accordance with the proposed change to § 1.4(d)(2).

Section 3.58 is proposed to be added to provide for the maintaining of a Department Register to record Government interests required by Executive Order 9424 in § 3.58(a). New § 3.58(b) would provide that the Office maintain a Secret Register to record Government interests also required by the Executive Order.

Section 3.73(b) is proposed to be amended to remove the sentence requiring an assignee to specifically state that the evidentiary documents have been reviewed and to certify that title is in the assignee seeking to take action. The sentence is deemed to be unnecessary in view of the proposed amendment to § 1.4(d). Section 3.73(b) has been clarified by addition of a reference to an example of documentary evidence that can be submitted.

Section 5.1 is proposed to be amended by removing the current subject matter as being duplicative of material in the other sections of this part and to be replaced by subject matter proposed to be deleted from § 5.33.

Section 5.2(b) through (d) are proposed to be removed as repetitive of material in the sections following with § 5.2(b) being replaced with subject matter of the first sentence from § 5.7.

Section 5.3 would be amended by replacement of ''response'' with ''reply'' in accordance with the proposed change to § 1.111.

Section 5.4 is proposed to be amended by removing unnecessary subject matter from paragraph (a), eliminating, in paragraph (d), the requirement that the petition be verified in accordance with the proposed amendment to § 1.4(d)(2) and by adding the first sentence of § 5.8 to paragraph (d).

Section 5.5 is proposed to be amended by removing unnecessary subject matter from paragraph (b) and by replacing current § 5.5(e) with subject matter proposed to be removed from § 5.6(a).

Section 5.6 is proposed to be removed and reserved with the subject matter of § 5.6(a) being placed in proposed § 5.5(e).

Section 5.7 is proposed to be removed and reserved with the first sentence thereof being placed in proposed § 5.2(b).

Section 5.8 is proposed to be removed and reserved with the subject matter from the first sentence thereof being placed in proposed § 5.4(e).

Sections 5.11 (b) and (c) are proposed to be amended to update the references to other parts of the Code of Federal Regulations.

Section 5.13 is proposed to be amended by removing the last two sentences which are considered to be unnecessary.

Section 5.14(a) is proposed to be amended by removing unnecessary subject matter and replacing ''serial number'' with the more appropriate designation ''application number''.

Section 5.15(a) is proposed to be amended by removing unnecessary subject matter and to update the references to other parts of the Code of Federal Regulations.

Section 5.16 is proposed to be removed and reserved as unnecessary.

Section 5.17 is proposed to be removed and reserved as unnecessary.

Section 5.18 is proposed to be amended to update the references to other parts of the Code of Federal Regulations.

Sections 5.19 (a) and (b) are proposed to be amended to update the references to other parts of the Code of Federal Regulations. Section 5.19(c) is proposed to be removed as unnecessary.

Section 5.20(b) is proposed to be removed as unnecessary.

Section 5.25(c) is proposed to be removed as unnecessary.

Section 5.31 is proposed to be removed and reserved as unnecessary.

Section 5.32 is proposed to be removed and reserved as unnecessary.

Section 5.33 is proposed to be removed and reserved and the subject matter added to § 5.1.

Part 7 is proposed to be removed and reserved as the substance thereof has been incorporated into part 3.

Compilation of Inquiries to Public

The Supplementary Information portion and the preamble portion of § 1.137 request comments on the advisability of applying retroactively provisions in the final rules to papers submitted prior to the effective date of the final rule changes.

The § 1.121 portion of the preamble requests comments regarding the advisability of harmonizing reissue practice with reexamination practice.

The § 1.137(b) portion of the preamble requests comments on alternatives as to the time period for submitting a petition thereunder.

Review Under the Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. The collections of information in this proposed rule have been reviewed and approved by, or are pending approval by the OMB under the following control numbers: 0651–0035, 0651–0033, 0651–0031, 0651–0016, 0651–0032 and 0651–0027. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data

needed, and completing and reviewing the collection of information.

With respect to the following collections of information, the Office invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the Office's functions, including whether the information will have practical utility; (2) The accuracy of the Office's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

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

OMB Number: 0651–0035.

Title: Address-Affecting Provisions.

Form Numbers: PTO/SB/82/83.

Type of Review: Pending OMB approval.

Affected Public: Individuals or Households, Business or Other Non-Profit, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 44,850.

Estimated Time Per Response: 0.2 hour.

Estimated Total Annual Burden Hours: 8,970 hours.

Needs and Uses: Under existing law, a patent applicant or assignee may appoint, revoke or change a representative to act in a representative capacity. Also, an appointed representative may withdraw from acting in a representative capacity. This collection includes the information needed to ensure that Office correspondence reaches the appropriate individual.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.

Type of Review: Pending OMB approval.

Affected Public: Individuals or Households, Business or Other Non-Profit, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 165,900.

Estimated Time Per Response: 0.382 hour.

Estimated Total Annual Burden Hours: 63,400 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to Title 35 of the U.S. Code concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08–12/21–26/31/32/42/43/61–64/67–69/91–93/96/97.

Type of Review: Pending OMB approval.

Affected Public: Individuals or Households, Business or Other Non-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 364,000.

Estimated Time Per Response: 1.779 hours.

Estimated Total Annual Burden Hours: 647,720 hours.

Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Citations; Terminal Disclaimers; Petitions to Revive; Express Abandonment; Appeal Notice; Small Entity; Petition for Access; Power to Inspect; Certificate of Mailing; Amendment Transmittal Letter; Deposit Account Order Form.

OMB Number: 0651–0016.

Title: Rules for Patent Maintenance Fees.

Form Numbers: PTO/SB/45/46/47/65/66.

Type of Review: Pending OMB approval.

Affected Public: Individuals or Households, Business or Other Non-Profit, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 273,800.

Estimated Time Per Response: .08 hour.

Estimated Total Annual Burden Hours: 22,640 hours.

Needs and Uses: Maintenance fees are required to maintain a patent in force under Title 35 of the U.S. Code. Payment of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. A patent number and serial number of the patent on which maintenance fees are paid are required in order to ensure proper crediting of such payments.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07/17–20/101–109.

Type of Review: Currently approved through 9/98.

Affected Public: Individuals or Households, Business or Other Non-Profit, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 221,000.

Estimated Time Per Response: 10.8 hours.

Estimated Total Annual Burden Hours: 2,387,000 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statutes and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Plant Color Coding Sheet, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statutes and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0027.

Title: Changes in Patent and Trademark Assignment Practices.

Form Numbers: PTO–1618 and PTO–1619, PTO/SB/15/41.

Type of Review: Currently approved through 9/98.

Affected Public: Individuals or households and businesses or other for-profit institutions.

Estimated Number of Respondents: 170,000.

Estimated Time Per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 85,000 hours.

Needs and Uses: The Office records about 170,000 assignments or documents related to ownership of patent and trademark cases each year. The Office requires a cover sheet to expedite the processing of these documents and to ensure that they are properly recorded.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C.

3507(d)), the Office has submitted a copy of this proposed rulemaking to OMB for its review of these information collections. Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs of OMB, New Executive Office Bldg., 725 17th St. NW, rm. 10235, Washington, DC 20503, Attn: Desk Officer for the Patent and Trademark Office.

OMB is required to make a decision concerning the collections 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 Office on the proposed regulations.

Other Considerations

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the proposed rule change would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The principal impact of these proposed changes is to reduce the regulatory burden on the public in filing patent applications and petitions therein.

The PTO has determined that this proposed rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Deceptive intent, Inventions and patents.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents.

37 CFR Part 5

Inventions and patents, Licenses and exports, Secrecy.

37 CFR Part 7

Inventions and patents.

For the reasons set forth in the preamble, 37 CFR parts 1, 3, 5 and 7 are proposed to be amended as follows, with removals indicated by brackets ([ ]) and additions are indicated by arrows (> <):

PART 1— RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 6, 23, unless otherwise noted.

1a. Section 1.4 is proposed to be amended by revising paragraph (d) and by adding paragraph (g) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d)>(1)< Each piece of correspondence, except as provided for in paragraphs (e) and (f) of this section, filed in a patent or trademark application, reexamination proceeding, patent file or trademark registration file, trademark opposition proceeding, trademark cancellation proceeding, or trademark concurrent use proceeding, which requires a person's signature, must either:

[(1)]>(i)< Be an original, that is, have an original signature personally signed in permanent ink by that person; or

[(2)]>(ii)< Be a copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original >or of a copy of a copy<. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Patent and Trademark Office may require submission of the original.

>(2) By presenting to the Office any paper the party submitting such paper is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances that:

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(3) Sanctions:

(i) Violations of paragraphs (d)(2)(i) to (iv) of this section after notice and reasonable opportunity to respond are subject to such sanctions as are deemed appropriate by the Commissioner including issuance of a Notice of Termination of Proceedings or return of papers; and

(ii) Whoever, in any matter within the jurisdiction of the Patent and Trademark Office knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth in 18 U.S.C. 1001, and may jeopardize the validity or enforceability of the application or any patent issuing thereon.<

* * * * *

>(g) An applicant who has not made of record a registered attorney or agent may be required to state whether assistance was received in the preparation or prosecution of the patent application, for which any compensation or consideration was given or charged, and if so, to disclose the name or names of the person or persons providing such assistance. Assistance includes the preparation for the applicant of the specification and amendments or other papers to be filed in the Patent and Trademark Office, as well as other assistance in such matters, but does not include merely making drawings by draftsmen or stenographic services in typing papers.<

2. Section 1.6 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(e) *Interruptions in U.S. Postal Service.* If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

(1) Promptly filed after the ending of the designated interruption or emergency; and

(2) Accompanied by a statement indicating that such correspondence would have been filed on that particular

date if it were not for the designated interruption or emergency in the United States Postal Service. [Such statement must be a verified statement if made by a person other than a practitioner as defined in § 10.1(r) of this chapter.]

3. Section 1.8 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.8 Certificate of mailing or transmission.

* * * * *

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence,

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. [Such statement must be a verified statement if made by a person other than a practitioner as defined in § 10.1(r) of this chapter.] If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

* * * * *

4. Section 1.10 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.10 Filing of papers and fees by "Express Mail" with certificate.

* * * * *

(c) The Patent and Trademark Office will accept the certificate of mailing by "Express Mail" and accord the paper or fee the certificate date under 35 U.S.C. 21(a) (unless the certificate date is a Saturday, Sunday, or Federal holiday within the District of Columbia—see § 1.6(a)) without further proof of the date on which the mailing by "Express Mail" occurred unless a question is present regarding the date of mailing. If more than a reasonable time has elapsed between the certificate date and the Patent and Trademark Office receipt date or if other questions regarding the date of mailing are present, the person mailing the paper or fee may be required to file a copy of the "Express Mail" receipt showing the actual date of mailing and a statement from the person who mailed the paper or fee [averring to the fact] >stating< that the mailing occurred on the date certified. [Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office.]

5. Section 1.14 is proposed to be amended by revising paragraphs (a) and (e) and by adding paragraph (f) to read as follows:

§ 1.14 Patent applications preserved in [secrecy] >confidence<.

(a) Except as provided in § 1.11(b) pending patent applications are preserved in [secrecy] >confidence<. No information will be given by the Office respecting the filing by any particular person of an application for a patent, the pendency of any particular case before it, or the subject matter of any particular application, nor will access be given to or copies furnished of any pending application or papers relating thereto, without written authority in that particular application from the applicant or his >or her< assignee or attorney or agent of record, unless the application has been identified by [serial] >application< number in a published patent document or the United States of America has been indicated as a Designated State in a published international application, in which case status information >,< such as whether it is pending, abandoned, or patented >,< may be supplied, or unless it shall be necessary to the proper conduct of business before the Office or as provided by this part. Where an application has been patented, the patent number and issue date may also be supplied.

* * * * *

(e) Any request by a member of the public seeking access to, or copies of, any pending or abandoned application preserved in [secrecy] >confidence< pursuant to paragraphs (a) and (b) of this section, or any papers relating thereto, must >:<

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

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

>(f) Information as to the filing of an application will be published in the Official Gazette as required by § 1.47(a) and (b).<

6. Section 1.17 is proposed to be amended by removing and reserving paragraphs (b) through (d) and revising paragraphs (a) and (i) to read as follows:

§ 1.17 Patent application processing fees.

(a) Extension fee>s pursuant to § 1.136(a):< [for response within first month pursuant to § 1.136(a):

By a small entity (§ 1.9(f))....$55.00
By other than a small entity ....$110.00]

>(1) For reply within first month:

By a small entity (§ 1.9(f))....$55.00
By other than a small entity $110.00

(2) For reply within second month:

By a small entity (§ 1.9(f))....$195.00
By other than a small entity $390.00

(3) For reply within third month:

By a small entity (§ 1.9(f))....$465.00
By other than a small entity $930.00

(4) For reply within fourth month:

By a small entity (§ 1.9(f))....$735.00
By other than a small entity $1,470.00

(5) For reply within fifth month:

By a small entity (§ 1.9(f))....$1,005.00
By other than a small entity ....$2,010.00<

(b) >Removed< [Extension fee for response within second month pursuant to § 1.136(a):

By a small entity (§ 1.9(f))....$190.00
By other than a small entity ....$380.00]

(c) >Removed< [Extension fee for response within third month pursuant to § 1.136(a):

By a small entity (§ 1.9(f))....$450.00
By other than a small entity ....$900.00]

(d) >Removed< [Extension fee for response within fourth month pursuant to § 1.136(a):

By a small entity (§ 1.9(f))....$700.00
By other than a small entity ....$1,400.00]

* * * * *

(i) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph....$130.00

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.53—to accord a filing date, except in provisional applications.

§ 1.55—for entry of late priority papers.

>§ 1.59—for expungement and return of information.<

[§ 1.60—to accord a filing date.

§ 1.62—to accord a filing date.]

§ 1.97(d)—to consider an information disclosure statement.

§ 1.102—to make an application special.

§ 1.103—to suspend action in application.

§ 1.177>(a)<—for [divisional] >multiple reissue applications< [reissues to issue separately].

§ 1.312—for amendment after payment of issue fee.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

§ 1.666(b)—for access to an interference settlement agreement.

§ 3.81—for a patent to issue to assignee, [where the] assignment [was] submitted after payment of the issue fee.

* * * * *

7. Section 1.21 is proposed to be amended by revising paragraph (n) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(n) For handling an incomplete or improper application under § 1.53(c) [, § 1.60 or § 1.62].....$130.00

* * * * *

8. Section 1.26 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.26 Refunds.

(a) [Money] >Any fee< paid by [actual] mistake or in excess >of that required< will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five may be returned by check or, if requested, by credit to a deposit account.

* * * * *

9. Section 1.27 is proposed to be revised to read as follows:

§ 1.27 Statement of status as small entity.

(a) Any person seeking to establish status as a small entity (§ 1.9(f) of this part) for purposes of paying fees in an application or a patent must file a [verified] statement in the application or patent prior to or with the first fee paid as a small entity. Such a [verified] statement need only be filed once in an application or patent and remains in effect until changed.

(b) >When establishing status as a small entity< [Any verified statement filed] pursuant to paragraph (a) of this section >, any statement filed< on behalf of an independent inventor must be signed by the independent inventor except as provided in § 1.42, § 1.43, or § 1.47 of this part and must aver that the inventor qualifies as an independent inventor in accordance with § 1.9(c) of this part. Where there are joint inventors in an application, each inventor must file a [verified] statement establishing status as an independent inventor in order to qualify as a small entity. Where any rights have been assigned, granted, conveyed, or licensed, or there is an obligation to assign, grant, convey, or license, any rights to a small business concern, a nonprofit organization, or any other individual, a [verified] statement must be filed by the individual, the owner of the small business concern, or an official of the small business concern or nonprofit organization empowered to act on behalf of the small business concern or nonprofit organization averring to their status. For purposes of a [verified] statement under this paragraph, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license as set forth in § 1.9 of this part.

(c) Any [verified] statement filed pursuant to paragraph (a) of this section on behalf of a small business concern must (1) be signed by the owner or an official of the small business concern empowered to act on behalf of the concern; (2) aver that the concern qualifies as a small business concern as defined in § 1.9(d); and (3) aver that the exclusive rights to the invention have been conveyed to and remain with the small business concern or, if the rights are not exclusive, that all other rights belong to small entities as defined in § 1.9. Where the rights of the small business concern as a small entity are not exclusive, a [verified] statement must also be filed by the other small entities having rights averring to their status as such. For purposes of a [verified] statement under this paragraph, a license to a Federal agency resulting from a funding agreement with that agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a license as set forth in § 1.9 of this part.

(d) Any [verified] statement filed pursuant to paragraph (a) of this section on behalf of a nonprofit organization must

(1) be signed by an official of the nonprofit organization empowered to act on behalf of the organization;

(2) aver that the organization qualifies as a nonprofit organization as defined in § 1.9(e) of this part specifying under which one of § 1.9(e) (1), (2), (3), or (4) of this part the organization qualifies; and

(3) aver that exclusive rights to the invention have been conveyed to and remain with the organization or if the rights are not exclusive that all other rights belong to small entities as defined in § 1.9 of this part. Where the rights of the nonprofit organization as a small entity are not exclusive, a [verified] statement must also be filed by the other small entities having rights averring to their status as such. For purposes of a [verified] statement under this paragraph, a license to a Federal agency pursuant to 35 U.S.C. 202(c)(4) does not constitute a conveyance of rights as set forth in this paragraph.

10. Section 1.28 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

(a) The failure to establish status as a small entity (§§ 1.9(f) and 1.27 of this part) in any application or patent prior to paying, or at the time of paying, any fee precludes payment of the fee in the amount established for small entities. A refund pursuant to § 1.26 of this part, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if a [verified] statement under § 1.27 and a request for a refund of the excess amount are filed within two months of the date of the timely payment of the full fee. The two-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within two months of the date of payment of, the fee. Status as a small entity must be specifically established in each application or patent in which the status is available and desired. Status as a small entity in one application or patent does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the status has been established. >The refiling of an application under § 1.53 as a continuation, division, continuation-in-part or continued prosecution application or the filing of a reissue application requires a new determination as to continued entitlement to small entity status for the refiled application or the reissue application.< A nonprovisional application claiming benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) of a prior application, >a continued prosecution application, or a reissue application< may rely on a [verified] statement filed in the prior application >or in the patent< if the nonprovisional application >, the continued prosecution application or the reissue application< includes a reference to the [verified] statement in the prior application >or in the patent< or includes a copy of the [verified] statement in the prior application >or in the patent< and status as a small entity is still proper and desired. >The payment of a small entity basic statutory filing fee will substitute for the reference.< Once status as a small entity has been established in an application or patent, the status remains in that application or patent without the filing of a further [verified] statement

pursuant to § 1.27 of this part unless the Office is notified of a change in status.

* * * * *

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Office was not notified of a change in status as required by paragraph (b) of this section, the error will be excused [(1) if any deficiency between the amount paid and the amount due is paid within three months after the date the error occurred or (2) if any] >upon payment of the< deficiency between the amount paid and the amount due [is paid more than three months after the date the error occurred and the payment is accompanied by a statement explaining how the error in good faith occurred and how and when the error was discovered. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office]. The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full.

* * * * *

11. Section 1.33 is proposed to be amended by revising paragraph (a) to read as follows and to remove and reserve paragraph (b):

§ 1.33 Correspondence >address< respecting patent applications, reexamination proceedings, and other proceedings.

(a) [The residence and post office address of the applicant must appear in the oath or declaration if not stated elsewhere in the application.] The applicant [may also specify and] >, the assignee(s) of the entire interest (see §§ 3.71 and 3.73) or< an attorney or agent of record >(see § 1.34(b))< may specify a correspondence address to which communications about the application are to be directed. All notices, official letters, and other communications in the [case] >application< will be directed to the correspondence address or, if no such correspondence address is specified, to an attorney or agent of record (see § 1.34(b)), or, if no attorney or agent is of record, to the applicant [, or to any assignee of record of the entire interest if the applicant or such assignee so requests, or to an assignee of an undivided part if the applicant so requests, at the] >provided a< post office address [of which the Office] has been [notified] >furnished< in the [case] >application<. Amendments and other papers filed in the application must be signed:

(1) by the applicant, or

(2) if there is an assignee of record of an undivided part interest, by the applicant and such assignee, or

(3) if there is an assignee of record of the entire interest, by such assignee, or

(4) by an attorney or agent of record, or

(5) by a registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a). Double correspondence with an applicant and [his] >an< attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent [be] >is< made of record and a correspondence address has not been specified, correspondence will be held with the one last made of record.

(b) >[Reserved]<

* * * * *

12. Section 1.41 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.41 Applicant for patent.

(a) A patent [must be] >is< applied for in the name of the actual inventor or inventors. >The inventorship of an application is set forth in the oath or declaration that is executed in accordance with § 1.63.< [Full names must be stated, including the family name, and at least one given name without abbreviation together with any other given name or initial.] >For identification purposes, the name of the actual inventor or inventors should be supplied when the specification and any required drawing are filed. If the name of the actual inventor or inventors are not supplied when the specification and any required drawing are filed, the application should include an applicant identification consisting of alphanumeric characters.<

* * * * *

13. Section 1.47 is proposed to be revised to read as follows:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the [omitted] >nonsigning< inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts >,< [and] by the [required] fee >set forth in< [(]§ 1.17(h)[)]>,< and [must state] the last known address of the [omitted]>nonsigning< inventor. The Patent and Trademark Office shall forward notice of the filing of the application to the [omitted] >nonsigning< inventor at said address[. Should such notice be returned to the Office undelivered, or should the address of the omitted inventor be unknown,] >and< notice of the filing of the application shall be published in the *Official Gazette*. The [omitted] >nonsigning< inventor may subsequently join in the application on filing an oath or declaration [of the character required by] >complying with< § 1.63. [A patent may be granted to the inventor making the application, upon a showing satisfactory to the Commissioner, subject to the same rights which the omitted inventor would have had if he or she had been joined.]

(b) Whenever [an] >all the< [inventor] >inventors< [refuses] >refuse< to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom [the] >an< inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may make application for patent on behalf of and as agent for >all< the [inventor] >inventors<. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts >,< [and] a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, [and by] the [required] fee > set forth in< [(]§ 1.17(h)[)]>,< and [must state] the last known address of >all< the [inventor] >inventors<. [The assignment, written agreement to assign or other evidence of proprietary interest, or a verified copy thereof, must be filed in the Patent and Trademark Office.] The Office shall forward notice of the filing of the application to >all< the [inventor] >inventors< at the [address] >addresses< stated in the application[. Should such notice be returned to the Office undelivered, or should the address of the inventor be unknown] >and< notice of the filing of the application shall be published in the *Official Gazette*. [The] >An< inventor may subsequently join in the application on filing an oath or declaration [of the character required by] >complying with< § 1.63. [A patent may be granted to the inventor upon a showing satisfactory to the Commissioner.]

14. Section 1.48 is proposed to be revised to read as follows:

§ 1.48 Correction of inventorship >in a patent application<.

(a) [If the correct inventor or inventors are not named in a nonprovisional application through error without any

deceptive intention on the part of the actual inventor or inventors,] >If the inventive entity is set forth in error in an executed § 1.63 or § 1.175 oath or declaration and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor<, the application may be amended to name only the actual inventor or inventors. >When the application is involved in an interference, the amendment shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.< Such amendment must be [diligently made and must be] accompanied by:

(1) A petition including a statement [of facts verified by the original named inventor or inventors establishing when the error without deceptive intention was discovered and how it occurred] >from each person who is being added as an inventor and from each person who is being deleted as an inventor that the error in inventorship occurred without deceptive intention on their part<;

(2) An oath or declaration by each actual inventor or inventors as required by § 1.63 >or as permitted by §§ 1.42, 1.43 or 1.47<;

(3) The fee set forth in § 1.17(h); and

(4) >If an assignment has been executed by any of the original named inventors the,< [The] written consent of [any] >the< assignee >, see § 3.73(b)<. [When the application is involved in an interference, the petition shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.]

(b) If the correct inventors are named in [the] >a< nonprovisional application when filed and the prosecution of the application results in the amendment or cancellation of claims so that less than all of the originally named inventors are the actual inventors of the invention being claimed in the application, an amendment shall be filed deleting the names of the person or persons who are not inventors of the invention being claimed. >When the application is involved in an interference, the amendment shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634. Such< [The] amendment must be [diligently made and shall be] accompanied by:

(1) A petition including a statement identifying each named inventor who is being deleted and acknowledging that the inventor's invention is no longer being claimed in the application; and

(2) The fee set forth in § 1.17(h).

(c) If a nonprovisional application discloses unclaimed subject matter by an inventor or inventors not named in the application, the application may be amended [pursuant to paragraph (a) of this section] to add claims to the subject matter and name the correct inventors for the application. >When the application is involved in an interference, the amendment shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634. Such amendment must be accompanied by:

(1) A petition including a statement from each person being added as an inventor that the amendment is necessitated by amendment of the claims and that the inventorship error occurred without deceptive intention on their part;

(2) An oath or declaration by each actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or 1.47;

(3) The fee set forth in § 1.17(h); and

(4) If an assignment has been executed by any of the original named inventors, the written consent of the assignee, see § 3.73(b)<.

(d) If the name or names of an inventor or inventors were omitted in a provisional application through error without any deceptive intention on >their part< [the part of the actual inventor or inventors], the provisional application may be amended to add the name or names of the [actual] >omitted< inventor or inventors. Such amendment must be accompanied by:

(1) A petition including a statement that the >inventorship< error occurred without deceptive intention on the part of the [actual] >omitted< inventor or inventors[, which statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office]; and

(2) The fee set forth in § 1.17(q).

(e) If a person or persons were named as an inventor or inventors in a provisional application through error without any deceptive intention >on their part<, an amendment may be filed in the provisional application deleting the name or names of the person or persons who were erroneously named. Such amendment must be accompanied by:

(1) A petition including a statement [of facts verified] by the person or persons whose name or names are being deleted [establishing] that the >inventorship< error occurred without deceptive intention >on their part<;

(2) The fee set forth in § 1.17(q); and

(3) [The written consent of any assignee.] >If an assignment has been executed by any of the original named inventors, the written consent of the assignee, see § 3.73(b).

(f) If the correct inventor or inventors are not named on filing a nonprovisional application without an executed oath or declaration under § 1.63, the later submission of an executed oath or declaration under § 1.63 will act to correct the earlier identification of inventorship.

(g) The Office may require such other information as may be deemed appropriate under the particular circumstances surrounding the correction of inventorship.<

15. Section 1.51 is proposed to be amended by removing paragraph (c).

§ 1.51 General requisites of an application.

* * * * *

(c) [Removed]

16. Section 1.52 is proposed to be amended by revising paragraphs (a) and (d) as follows:

§ 1.52 Language, paper, writing, margins.

(a) The application, any amendments or corrections thereto, and the oath or declaration must be in the English language except as provided for in § 1.69 and paragraph (d) of this section, or be accompanied by a [verified] translation of the application and a translation of any corrections or amendments into the English language >together with a statement that the translation is accurate<. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written, typed, or printed in permanent ink or its equivalent in quality. All of the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing, typing, or printing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes. If the papers are not of the required quality, substitute typewritten or printed papers of suitable quality may be required.

* * * * *

(d) An application may be filed in a language other than English. [A verified] >An< English translation of the non-English-language application >, a statement that the translation is accurate,< and the fee set forth in § 1.17(k) are required to be filed with the application or within such time as may be set by the Office.

17. Section 1.53 is proposed to be amended by revising paragraphs (b) through (d) as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(b)(1) The filing date of an application for patent filed under this section, except for a provisional application >under paragraph (b)(2) of this section or a continued prosecution application under paragraph (b)(3) of this section<, is the date on which: a specification containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75; and any drawing required by § 1.81(a), are filed in the Patent and Trademark Office [in the name of the actual inventor or inventors as required by § 1.41]. No new matter may be introduced into an application after its filing date >(1.115(b)(1))< [(§ 1.118)]. [If all the names of the actual inventor or inventors are not supplied when the specification and any required drawing are filed, the application will not be given a filing date earlier than the date upon which the names are supplied unless a petition with the fee set forth in § 1.17(i) is filed which sets forth the reasons the delay in supplying the names should be excused.] A continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120, 121 or 365(c) and § 1.78(a)) may be filed under this >paragraph or paragraph (b)(3) of this< section [, § 1.60 or § 1.62]. A continuation-in-part application >must< [may also] be filed under this >paragraph< [section or § 1.62].

>(i) Any continuation or divisional application may be filed by all or by less than all of the inventors named in a prior application. A newly executed oath or declaration is not required (§ 1.51(a)(1)(ii)) and paragraph (d) of this section in a continuation or divisional application filed by all or by less than all of the inventors named in a prior application, provided that one of the following is submitted: A copy of the executed oath or declaration filed to complete (§ 1.51(a)(1)) the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c), or a copy of an unexecuted oath or declaration, and a statement that the copy is a true copy of the oath or declaration that was subsequently executed and filed to complete (§ 1.51(a)(1)) the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c). See paragraph (d) of this section for the filing of a continuation or divisional application without the submission of a newly executed oath or declaration or a copy of the oath or declaration for the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c).

(A) The copy of the executed or unexecuted oath or declaration for the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c) must be accompanied by a statement requesting the deletion of the names of the person or persons who are not inventors in the continuation or divisional application.

(B) Where the power of attorney or correspondence address was changed during the prosecution of the prior application, the change in power of attorney or correspondence address must be identified in the continuation or divisional application.

(ii) A newly executed oath or declaration must be filed in a continuation or divisional application naming an inventor not named in the prior application. A newly executed oath or declaration must be filed in a continuation-in-part application, which application may name all, more, or less than all of the inventors named in the prior application.

(iii) The inventorship of an application is set forth in the oath or declaration that is executed in accordance with § 1.63.<

(2) The filing date of a provisional application is the date on which: A specification as prescribed by 35 U.S.C. 112, first paragraph; and any drawing required by § 1.81(a), are filed in the Patent and Trademark Office [in the name of the actual inventor or inventors as required by § 1.41]. No amendment, other than to make the provisional application comply with all applicable regulations, may be made to the provisional application after the filing date of the provisional application. [If all the names of the actual inventor or inventors are not supplied when the specification and any required drawing are filed, the provisional application will not be given a filing date earlier than the date upon which the names are supplied unless a petition with the fee set forth in § 1.17(q) is filed which sets forth the reasons the delay in supplying the names should be excused.]

(i) A provisional application must also include a cover sheet identifying the application as a provisional application. Otherwise, the application will be treated as an application filed under >paragraph (b)(1) of this section< [§ 1.53(b)(1)].

(ii) An application for patent filed under >paragraph (b)(1) of this section< [§ 1.53(b)(1)] may be [treated as] >converted to< a provisional application and be accorded the original filing date provided that a petition requesting the conversion, with the fee set forth in § 1.17(q), is filed prior to the earlier of the abandonment of the [§ 1.53(b)(1)] application >under paragraph (b)(1) of this section<, the payment of the issue fee, the expiration of 12 months after the filing date of the [§ 1.53(b)(1)] application >under paragraph (b)(1) of this section<, or the filing of a request for a statutory invention registration under § 1.293. The grant of any such petition will not entitle applicant to a refund of the fees which were properly paid in the application filed under >paragraph (b)(1) of this section< [§ 1.53(b)(1)].

(iii) A provisional application shall not be entitled to the right of priority under § 1.55 or 35 U.S.C. 119 or 365(a) or to the benefit of an earlier filing date under § 1.78 or 35 U.S.C. 120, 121 or 365(c) of any other application. No claim for priority under § 1.78(a)(3) may be made in a design application based on a provisional application. No request under § 1.293 for a statutory invention registration may be filed in a provisional application. The requirements of §§ 1.821 through 1.825 regarding application disclosures containing nucleotide and/or amino acid sequences are not mandatory for provisional applications.

>(3) In a nonprovisional application that is complete as defined by § 1.51(a)(1) and filed on or after June 8, 1995, a continuation or divisional application that discloses and claims only subject matter disclosed in and names as inventors the same or less than all the inventors named in that prior complete application may be filed as a continued prosecution application under this paragraph. The filing date of a continued prosecution application is the date on which a request for an application under this paragraph including identification of the prior application number is filed.

(i) An application filed under this paragraph:

(A) Will utilize the file jacket and contents of the prior application, including the specification, drawings and oath or declaration, from the prior complete application (§ 1.51(a)) to constitute the new application, and will be assigned the application number of the prior application for identification purposes,

(B) Is a request to expressly abandon the prior application as of the filing date of the request for an application under this paragraph, and

(C) Must be filed before the payment of the issue fee, abandonment of, or termination of proceedings on the prior application, or after payment of the

issue fee if a petition under § 1.313(b)(5) is granted in the prior application.

(ii) The filing fee for a continued prosecution application filed under this paragraph is:

(A) The basic filing fee as set forth in § 1.16(a), and

(B) Any additional § 1.16 fee due based on the number of claims remaining in the application after entry of any amendment accompanying the request for an application under this paragraph and entry of any amendments under § 1.116 unentered in the prior application which applicant has requested to be entered in the continued prosecution application.

(iii) If an application filed under this paragraph is filed by less than all the inventors named in the prior application, a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the new application.

(iv) Any new change must be made in the form of an amendment to the prior application. Any new specification filed with the request for an application under this paragraph will not be considered part of the original application papers, but will be treated as a substitute specification in accordance with § 1.125.

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

(vi) In addition to identifying the application number of the prior application, applicant is urged to furnish in the request for an application under this paragraph the following information relating to the prior application to the best of his or her ability:

(A) Title of invention;

(B) Name of applicant(s);

(C) Correspondence address;

(D) Identification of any priority claim under 35 U.S.C. 119, 120 and 121.

(vii) Envelopes containing only requests and fees for filing an application under this paragraph should be marked ''Box CPA.''<

(c)>(1) If any application filed under paragraph (b) of this section is found to be incomplete or improper, applicant will be so notified and given a time period within which to correct the filing error.

(2) Any request for review of a notification pursuant to paragraph (c)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph. Any petition under this paragraph must be accompanied by the fee set forth in § 1.17(i) in an application filed under paragraphs (b)(1) or (b)(3) of this section, and the fee set forth in § 1.17(q) in an application filed under paragraph (b)(2) of this section. In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (c)(1) of this section will be the date the filing error is corrected.

(3) If an applicant is notified of a filing error pursuant to paragraph (c)(1) of this section, but fails to correct the filing error within the given time period or otherwise timely (§ 1.181(f)) take action pursuant to paragraph (c)(2) of this section, proceedings in the application will be considered terminated. Where proceedings in an application are terminated pursuant to this paragraph, the application may be returned or otherwise disposed of, and any filing fees, less the handling fee set forth in § 1.21(n), will be refunded.< [If any application is filed without the specification, drawing or name, or names, of the actual inventor or inventors required by paragraph (b)(1) or (b)(2) of this section, applicant will be so notified and given a time period within which to submit the omitted specification, drawing, name, or names, of the actual inventor, or inventors, in order to obtain a filing date as of the date of filing of such submission. A copy of the ''Notice of Incomplete Application'' form notifying the applicant should accompany any response thereto submitted to the Office. If the omission is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less the handling fee set forth in § 1.21(n). Any request for review of a refusal to accord an application a filing date must be by way of a petition accompanied by the fee set forth in § 1.17(i), if the application was filed under § 1.53(b)(1), or by the fee set forth in § 1.17(q), if the application was filed under § 1.53(b)(2).]

(d)(1) If an application which has been accorded a filing date pursuant to [paragraph] >paragraphs< (b)(1) >or (b)(3)< of this section >, including a continuation, divisional, or continuation-in-part application,< does not include the appropriate filing fee or an oath or declaration by the applicant [,] >pursuant to §§ 1.63 or 1.175, which may be a copy of the executed oath or declaration filed to complete, pursuant to § 1.51(a)(1), the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c), or a copy of an unexecuted oath or declaration, and a statement that the copy is a true copy of the oath or declaration that was subsequently executed and filed to complete (§ 1.51(a)(1)) the most immediate prior national application for which priority is claimed under 35 U.S.C. 120, 121 or 365(c), in a continuation or divisional application,< applicant will be so notified, if a correspondence address has been provided, given a period of time within which to file the fee, oath [,] or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application. [A copy of the ''Notice to File Missing Parts'' form mailed to applicant should accompany any response thereto submitted to the Office.] If the required filing fee is not timely paid, or if the processing and retention fee set forth in § 1.21(l) is not paid within one year of the date of mailing of the notification required by this paragraph, the application will be disposed of. No copies will be provided or certified by the Office of an application which has been disposed of or in which neither the required basic filing fee nor the processing and retention fee has been paid. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (c) of this section. If no correspondence address is included in the application, applicant has two months from the filing date to file the basic filing fee, oath or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application; or, if no basic filing fee has been paid, one year from the filing date to pay the processing and retention fee set forth in § 1.21(l) to prevent disposal of the application.

* * * * *

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

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

* * * * *

(b) Applicant will be informed of the application number and filing date by a filing receipt >, unless the application is an application filed under § 1.53(b)(3)<.

19. Section 1.55 is proposed to be amended revising paragraph (a) to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant in a nonprovisional application may claim the benefit of the filing date of one or more prior foreign applications under the conditions specified in 35 U.S.C. 119 (a) through (d) and 172. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by § 1.63. The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) must be filed in the case of an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, when specifically required by the examiner, and in all other cases, before the patent is granted. If the certified copy is not in the English language, a translation need not be filed except in the case of interference; or when necessary to overcome the date of a reference relied upon by the examiner; or specifically required by the examiner, in which event an English language translation must be filed together with a statement that the translation of the certified copy is accurate. [The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office.]

* * * * *

20. Section 1.59 is proposed to be revised to read as follows:

§ 1.59 >Expungement of information or copy of papers in application file< [Papers of application with filing date not to be returned].

>(a)(1) Information< [Papers] in an application which has received a filing date pursuant to § 1.53 will not be >expunged and< returned [for any purpose whatever] >, except as provided in paragraph (b) of this section<. [If applicants have not preserved copies of the papers, the Office will furnish copies at the usual cost of any application in which either the required basic filing fee (§ 1.16) or, if the application was filed under § 1.53(b)(1), the processing and retention fee § 1.21(l) has been paid.] See § 1.618 for return of unauthorized and improper papers in interferences.

>(2) Information forming part of the original disclosure, i.e., written specification, drawings, claims and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175, will not be expunged from the application file.

(b) Information, other than what is excluded by paragraph (a)(2) of this section, may be requested to be expunged and returned to applicant upon petition under this paragraph and payment of the petition fee set forth in § 1.17(i). Any petition to expunge and return information from an application must establish to the satisfaction of the Commissioner that the return of the information is appropriate.

(c) If applicants have not preserved copies of any application papers, the Office will furnish copies upon request, at the usual cost, for any application in which either the required basic filing fee (§ 1.16) or, if the application was filed under § 1.53(b)(1), the processing and retention fee (§ 1.21(l)) has been paid.<

§ 1.60 [Removed and reserved]

21. Section 1.60 is proposed to be removed and reserved.

§ 1.62 [Removed and reserved]

22. Section 1.62 is proposed to be removed and reserved.

23. Section 1.63 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.63 Oath or declaration.

(a) An oath or declaration filed under § 1.51(a)(1)(ii) as a part of an application must:

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

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

(3) Identify each inventor >by: full name, including the family name, and at least one given name without abbreviation together with any other given name or initial,< and the residence >, post office address< and country of citizenship of each inventor; and

(4) State whether the inventor is a sole or joint inventor of the invention claimed.

* * * * *

24. Section 1.69 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.69 Foreign language oaths and declarations.

* * * * *

(b) Unless the text of any oath or declaration in a language other than English is a form provided or approved by the Patent and Trademark Office, it must be accompanied by [a verified] >an< English translation >together with a statement that the translation is accurate<, except that in the case of an oath or declaration filed under § 1.63 the translation may be filed in the Office no later than two months from the date applicant is notified to file the translation.

25. Section 1.78 is proposed to be amended by revising paragraph (a)(1) as follows:

§ 1.78 Claiming benefit of [an] earlier filing date and cross-references to other applications.

(a)(1) A nonprovisional application may claim an invention disclosed in one or more prior filed copending nonprovisional applications or international applications designating the United States of America. In order for a nonprovisional application to claim the benefit of a prior filed copending nonprovisional application or international application designating the United States of America, each prior application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior application must be:

(i) Complete as set forth in § 1.51(a)(1); or

(ii) Entitled to a filing date as set forth in § >§ < 1.53(b)(1) >or (b)(3)< [, § 1.60 or § 1.62] and include the basic filing fee set forth in § 1.16; or

(iii) Entitled to a filing date as set forth in § 1.53(b)(1) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(d)(1).

* * * * *

26. Section 1.84 is proposed to be amended by revising paragraph (b) as follows:

§ 1.84 Standards for drawings.

* * * * *

(b) *Photographs.*

(1) Black and white. Photographs are not ordinarily permitted in utility [and design] applications. However, the Office will accept photographs in utility [and design] applications only after >the< granting of a petition filed under this paragraph which requests that photographs be accepted. Any such petition must include the following:

(i) The appropriate fee set forth in § 1.17(h); and

(ii) Three (3) sets of photographs. Photographs must either be developed on double weight photographic paper or be permanently mounted on bristol board. The photographs must be of sufficient quality so that all details in the drawings are reproducible in the printed patent.

(2) Color. Color photographs will be accepted in utility patent applications if the conditions for accepting color drawings have been satisfied. See paragraph (a)(2) of this section.

* * * * *

27. Section 1.91 is proposed to be revised to read as follows:

§ 1.91 Models >and exhibits< not generally required as part of application or patent.

Models >and exhibits< [were once required in all cases admitting a model, as a part of the application, and these models became a part of the record of the patent. Such models are no longer generally required (the description of the invention in the specification, and the drawings, must be sufficiently full and complete, and capable of being understood, to disclose the invention without the aid of a model), and] will not be admitted unless specifically [called for.] >required by the Office. A model, working model, or other physical exhibit may be required if deemed necessary for any purpose in examination of the application.<

§ 1.92 [Removed and reserved]

28. Section 1.92 is proposed to be removed and reserved.

29. Section 1.97 is proposed to be amended by revising paragraphs (c) through (e) to read as follows:

§ 1.97 Filing of information disclosure statement.

* * * * *

(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, but before the mailing date of either:

(1) A final action under § 1.113>;< or

(2) A notice of allowance under § 1.311, whichever occurs first, provided the >information disclosure< statement is accompanied by either a [certification] >statement< as specified in paragraph (e) of this section or the fee set forth in § 1.17(p).

(d) An information disclosure statement shall be considered by the Office if filed after the mailing date of either:

>(1) A< [a] final action under § 1.113>;< or

>(2) A< [a] notice of allowance under § 1.311, whichever occurs first, but before payment of the issue fee, provided the >information disclosure< statement is accompanied by:

[(1) >(i)< A [certification] >statement< as specified in paragraph (e) of this section,

[2] >(ii)< A petition requesting consideration of the information disclosure statement, and

[3] >(iii)< The petition fee set forth in § 1.17(i)(1).

(e) A [certification] >statement< under this section must state either:

(1) That each item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the >information disclosure< statement [,] >;< or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application [or] >and<, to the knowledge of the person signing the [certification] >statement< after making reasonable inquiry, was known to any individual designated in § 1.56(c) more than three months prior to the filing of the >information disclosure< statement.

* * * * *

§ 1.101 [Removed and reserved]

30. Section 1.101 is proposed to be removed and reserved.

31. Section 1.102 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.102 Advancement of examination.

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Commissioner to expedite the business of the Office, or upon filing of a request under paragraph (b) of this section or upon filing a petition under paragraphs (c) or (d) of this section with a [verified] showing which, in the opinion of the Commissioner, will justify so advancing it.

* * * * *

32. Section 1.103 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.103 Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in § 1.17(i)(1). Action will not be suspended when a >reply< [response] by the applicant to an Office action is required.

* * * * *

§ 1.104 [Removed and reserved].

33. Section 1.104 is proposed to be removed and reserved.

§ 1.105 [Removed and reserved].

34. Section 1.105 is proposed to be removed and reserved.

§ 1.108 [Removed and reserved].

35. Section 1.108 is proposed to be removed and reserved.

36. Section 1.111 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.111 Reply by applicant or patent owner.

* * * * *

(b) In order to be entitled to reconsideration or further examination, the applicant or patent owner must [make request therefor in writing] >reply<. The reply by the applicant or patent owner must >be reduced to a writing which< distinctly and specifically [point] >points< out the supposed errors in the examiner's action and must [respond] >reply< to every ground of objection and rejection in the prior Office action. >The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over the applied references.< If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the case to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

* * * * *

37. Section 1.112 is proposed to be revised to read as follows:

§ 1.112 Reconsideration >before final action<.

After [response] >reply< by applicant or patent owner (§ 1.111) >to a non-final action<, the application or patent under reexamination will be reconsidered and again examined. The applicant or patent owner will be notified if claims are rejected, or objections or requirements made, in the same manner as after the first examination. Applicant or patent owner may [respond] >reply< to such Office action in the same manner provided in § 1.111, with or without amendment. [Any amendments after the second Office action must ordinarily be restricted to the rejection or to the objections or requirements made. The application or patent under

reexamination will be again considered, and so on repeatedly, unless the examiner has indicated that the action is final.]

38. Section 1.113 is proposed to be revised to read as follows:

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration >by the examiner< the rejection or other action may be made final, whereupon applicant's or patent owner's >reply< [response] is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). >Reply< [Response] to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the >reply< [response] to a final rejection or action must comply with any requirements or objections >as< to form.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the case, clearly stating the reasons >in support thereof< [therefor].

>(c) The first action in an application will not be made final.<

39. Section 1.115 is proposed to be revised to read as follows:

§ 1.115 Amendment.

[The applicant may amend before or after the first examination and action and also after the second or subsequent examination or reconsideration as specified in 1.112 or when and as specifically required by the examiner. The patent owner may amend in accordance with 1.510(e) and 1.530(b) prior to reexamination and during reexamination proceedings in accordance with 1.112 and 1.116.]

>(a) The applicant or the patent owner may amend the disclosure (*e.g.*, specification, claims, drawings and abstract) of an application before final action as indicated in § 1.121, except for nonprovisional applications which are subject to § 1.53(b)(2). The patent owner may amend the patent in a reexamination proceeding in accordance with § § 1.510(e) and 1.530(d).

(b)(1) No amendment shall introduce new matter into the disclosure of an application.

(2) If it is determined that an amendment filed after the filing date of the application introduces new matter into the disclosure, the claims containing the new matter will be rejected and deletion of the new matter in the description and drawings will be required.

(c) Claims may be amended by canceling particular claims, by presenting new claims, or by rewriting particular claims as indicated in § 1.121(b). If an amendment is in reply to an Office action note § 1.111.

(d) The disclosure must be amended when required to correct inaccuracies of description and definition, and to secure correspondence between the claims, the specification, and the drawing.

(e) No amendment to the drawing may be made except with permission of the Office. Permissible changes in the construction shown in any drawing may be made only by the submission of a substitute drawing by applicant. A sketch in permanent ink showing proposed changes in red, to become part of the record, must be filed for approval by the examiner and should be in a separate paper.

(f) To amend a clause that was previously amended, the clause should be wholly rewritten so that no interlineations or deletions shall appear in the clause as finally presented. Matter canceled by amendment can be reinstated only by a subsequent amendment presenting the canceled matter as a new insertion.<

40. Section 1.116 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.116 Amendments after final action.

(a) After >a< final rejection or >other final< action (§ 1.113) >,< amendments >are limited to< [may be made] cancelling claims or complying with any requirement of form >expressly set forth in a previous Office action.< [which has been made. Amendments presenting rejected claims in better form for consideration on appeal may be admitted.] The admission of, or refusal to admit, any amendment after final rejection, and any >related< proceedings [relative thereto], shall not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135.

(b) >Any amendment not in compliance with paragraph (a) of this section must be submitted with a request for an application under § 1.53(b)(3) to ensure its consideration.< [If amendments touching the merits of the application or patent under reexamination are presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.]

* * * * *

§ 1.117 [Removed and reserved]

41. Section 1.117 is proposed to be removed and reserved

§ 1.118 [Removed and reserved]

42. Section 1.118 is proposed to be removed and reserved

§ 1.119 [Removed and reserved]

43. Section 1.119 is proposed to be removed and reserved

44. Section 1.121 is proposed to be revised to read as follows:

§ 1.121 Manner of making amendments.

[(a) Erasures, additions, insertions, or alterations of the Office file of papers and records must not be physically entered by the applicant. Amendments to the application (excluding the claims) are made by filing a paper (which should conform to § 1.52) directing or requesting that specified amendments be made. The exact word or words to be stricken out or inserted by said amendment must be specified and the precise point indicated where the deletion or insertion is to be made.

(b) Except as otherwise provided herein, a particular claim may be amended only by directions to cancel or by rewriting such claim with underlining below the word or words added and brackets around the word or words deleted. The rewriting of a claim in this form will be construed as directing the cancellation of the original claim; however, the original claim number followed by the parenthetical word must be used for the rewritten claim. If a previously rewritten claim is rewritten, underlining and bracketing will be applied in reference to the previously rewritten claim with the parenthetical expression ''twice amended,'' ''three times amended,'' etc., following the original claim number.

(c) A particular claim may be amended in the manner indicated for the application in paragraph (a) of this section to the extent of corrections in spelling, punctuation, and typographical errors. Additional amendments in this manner will be admitted provided the changes are limited to (1) deletions and/or (2) the addition of no more than five words in any one claim. Any amendment submitted with instructions to amend particular claims but failing to conform to the provisions of paragraphs (b) and (c) of this section may be considered nonresponsive and treated accordingly.

(d) Where underlining or brackets are intended to appear in the printed patent

or are properly part of the claimed material and not intended as symbolic of changes in the particular claim, amendment by rewriting in accordance with paragraph (b) of this section shall be prohibited.

(e) In reissue applications, both the descriptive portion and the claims are to be amended by either (1) submitting a copy of a portion of the description or an entire claim with all matter to be deleted from the patent being placed between brackets and all matter to be added to the patent being underlined, or (2) indicating the exact word or words to be stricken out or inserted and the precise point where the deletion or insertion is to be made. Any word or words to be inserted must be underlined. See 1.173.

(f) Proposed amendments presented in patents involved in reexamination proceedings must be presented in the form of a full copy of the text of: (1) Each claim which is amended and (2) each paragraph of the description which is amended. Matter deleted from the patent shall be placed between brackets and matter added shall be underlined. Copies of the printed claims from the patent may be used with any additions being indicated by carets and deleted material being placed between brackets. Claims must not be renumbered and the numbering of the claims added for reexamination must follow the number of the highest numbered patent claim. No amendment may enlarge the scope of the claims of the patent. No new matter may be introduced into the patent.]

>(a) *Amendments in non-reissue applications:* Amendments in applications excluding reissue applications are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(1) *Specification other than claims:* Amendments to the specification other than claims may only be made as follows:

(i) The precise point in the specification must be indicated where an amendment is to be made.

(ii) If the only changes to the specification are deletions, amendments may only be made by precise directions to delete.

(iii) Except as provided by paragraph (a)(1)(ii) of this section, amendments must be made by submission of a copy of the rewritten sentence(s), paragraph(s) and/or page(s) with marking pursuant to paragraph (a)(1)(iv) of this section.

(iv) Underlining below the subject matter added and brackets around the subject matter deleted are to be used to mark the amendments being made. If a previously rewritten sentence(s), paragraph(s) or page(s) is again rewritten, marking will be applied in reference to the sentence(s), paragraph(s) or page(s) as previously rewritten.

(2) *Claims:* Amendments to the claims may only be made as follows:

(i)(A) A claim may be cancelled by a direction to cancel the claim or by omitting the claim when submitting a complete copy of all pending claims as required by (a)(2)(ii) of this section.

(B) A previously submitted claim may only be amended, other than by cancellation pursuant to paragraph (a)(2)(i)(A) of this section, by submitting a copy of the claim completely rewritten with markings, pursuant to paragraph (a)(2)(iii) of this section, of the subject matter added and/or deleted. The rewriting of a claim in this form will be construed as directing that the rewritten claim be a replacement for the previously submitted claim; however, the previously submitted claim number followed by the parenthetical word ''amended'' must be used for the rewritten claim.

(C) A new claim may only be added by submitting a clean copy of the new claim. The numbering of any new claims added must follow the number of the highest numbered previously submitted claim.

(ii) Whenever a previously submitted claim is amended by rewriting pursuant to paragraph (a)(2)(i)(B) of this section or a new claim is added pursuant to paragraph (a)(2)(i)(C) of this section, applicant must submit a separate complete copy of all pending claims. Such separate complete copy must include all newly rewritten, all newly added, all previously rewritten claims that are still pending, and any unamended claims that are still pending. For all claims, other than those claims being newly rewritten, the copy must be submitted in clean form without markings as to previous amendments.

(iii) Underlining below the subject matter added and brackets around the subject matter deleted relative to the previously submitted claim are to be used to mark the amendments being made. If a previously rewritten claim is again rewritten, marking will be applied in reference to the claim as previously rewritten, and the parenthetical expression will be ''twice amended,'' ''three times amended,'' *etc.*, following the original claim number.

(iv) The failure to include a copy of any previously submitted claim with the separate complete copy of all pending claims required by paragraph (a)(2)(ii) of this section will be construed as a direction to cancel that claim.

(3) *Drawings:* Amendments to the original application drawings are not permitted. Any change to the application drawings must be by way of a substitute sheet of drawings for each sheet changed submitted in compliance with § 1.84.

(4) Any amendment to an application that is present in a substitute specification submitted pursuant to § 1.125 must be presented under the provisions of § 1.121(a)(1) either prior to or concurrent with submission of the substitute specification.

(b) *Amendments in reissue applications:* Amendments in reissue applications are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(1) *Specification other than claims:* Amendments to the specification other than claims may only be made as follows:

(i) The precise point in the specification must be indicated where an amendment is to be made.

(ii) Amendments must be made by submission of the entire text of the rewritten paragraph(s) with markings pursuant to paragraph (b)(1)(iv) of this section.

(iii) Each submission of an amendment to the specification must include all amendments to the specification relative to the patent as of the date of the submission. This would include amendments to the specification of the patent submitted for the first time as well as any previously submitted amendments that are still desired. Any previously submitted amendments to the specification that are no longer desired must not be included in the submission.

(iv) Underlining below the subject matter added to the patent and brackets around the subject matter deleted from the patent are to be used to mark the amendments being made.

(2) *Claims:* Amendments to the claims are made as follows:

(i)(A) The amendment must include the entire text of each patent claim which is amended and of each added claim with marking pursuant to paragraph (b)(2)(i)(C), of this section except a patent claim should be cancelled by a statement cancelling the patent claim without presentation of the text of the patent claim.

(B) Patent claims must not be renumbered and the numbering of any claims added to the patent must follow the number of the highest numbered patent claim.

(C) Underlining below the subject matter added to the patent and brackets around the subject matter deleted from the patent are to be used to mark the

amendments being made. If a claim is amended pursuant to paragraph (b)(2)(i)(A) of this section, a parenthetical expression ''amended,'' ''twice amended,'' *etc.*, should follow the original claim number.

(ii) Each amendment submission must set forth the status, as of the date of the amendment, of all patent claims and of all added claims.

(iii) Each amendment when originally submitted must be accompanied by an explanation of the support in the disclosure of the patent for the amendment along with any additional comments on page(s) separate from the page(s) containing the amendment.

(iv) Each submission of an amendment to any claim (patent claims and all added claims) must include all pending amendments to the claims as of the date of the submission. This would include amendments to the claims submitted for the first time as well as any previously submitted amendments to the claims that are still desired. Any previously submitted amendments to the claims that are no longer desired must not be included in the submission. A copy of any patent claims that have not been amended are not to be presented with each amendment submission.

(v) The failure to submit a copy of any added claim, as required by paragraph (b)(2)(iv) of this section, will be construed as a direction to cancel that claim.

(vi) No reissue patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent, pursuant to 35 U.S.C. 251. No amendment to the patent claims may introduce new matter or be made in an expired patent.

(3) *Drawings:* Amendments to the original patent drawings are not permitted. Any change to the patent drawings must be by way of a new sheet of drawings with the amended figures identified as ''amended'' and with added figures identified as ''new'' for each sheet changed submitted in compliance with § 1.84.

(c) *Amendments in reexamination proceedings:* Any proposed amendment to the description and claims in patents involved in reexamination proceedings must be made in accordance with § 1.530.<

§ 1.122 [Removed and reserved]

45. Section 1.122 is proposed to be removed and reserved.

§ 1.123 [Removed and reserved]

46. Section 1.123 is proposed to be removed and reserved.

§ 1.124 [Removed and reserved]

47. Section 1.124 is proposed to be removed and reserved.

§ 1.125 Substitute specification.

48. Section 1.125 is proposed to be revised as follows:

>(a)< If the number or nature of the amendments > or the legibility of the specification< [shall] render it difficult to [consider the case, or to arrange the papers for printing or copying] >process an application<, the Office may require the entire specification, including the claims, or any part thereof, to be rewritten in clean form incorporating all amendments.

>(b)< A substitute specification for an application other than a reissue application may [not be accepted unless it has been required by the examiner or unless it is clear to the examiner that acceptance of a substitute specification would facilitate processing of the application. Any substitute specification] >be< filed [must be] >at any point up to payment of the issue fee if it is< accompanied by a statement that the substitute specification>:

(1)< includes no new matter >, and

(2) includes only amendments submitted in accordance with the requirements of § 1.121(a) either prior to or concurrent with submission of the substitute specification<. [Such statement must be a verified statement if made by a person not registered to practice before the Office.].

>(c) A substitute specification submitted under this section must be submitted in clean form without markings as to amended material.

(d) A substitute specification under this section is not permitted in reissue applications or in reexamination proceedings.<

49. Section 1.133 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.133 Interviews.

* * * * *

(b) In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for >reply< [response] to Office actions as specified in § 1.111, § 1.135.

50. The undesignated center heading in Subpart B–National processing Provisions, following § 1.133 is proposed to be revised to read as follows:

Time for >Reply< [Response] by Applicant; Abandonment of Application

51. Section 1.134 is proposed to be revised as follows:

§ 1.134 Time period for >reply< [response] to an Office action.

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for >reply< [response] to an Office action. Unless the applicant is notified in writing that [response] >a reply< is required in less than six months, a maximum period of six months is allowed.

52. Section 1.135 is proposed to be revised to read as follows:

§ 1.135 Abandonment for failure to >reply< [respond] within time period.

(a) If an applicant of a patent application fails to >reply< [respond] within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper action as the condition of the case may require. The admission of >, or refusal to admit, any amendment after final rejection, and any related proceedings,< an amendment not responsive to the last Office action, or refusal to admit the same, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When action by the applicant is a bona fide attempt to >reply< [respond] and to advance the case to final action, and is substantially a complete [response] >reply< to the >non-final< Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, >applicant< [opportunity to explain and supply the omission] may be given >a new time period for reply under § 1.134 to supply the omission or to file a continuing application< [before the question of abandonment is considered].

53. Section 1.136 is proposed to be amended by revising the heading and paragraph (a) to read as follows:

§ 1.136 Filing of timely >replies< [responses] with petition and fee for extension of time and extensions of time for cause.

(a)(1) If an applicant is required to >reply< [respond] within a nonstatutory or shortened statutory time period, applicant may >reply< [respond] up to [four] >five< months after the time

period set >and within the statutory period, if applicable,< if a petition for an extension of time and the fee set in § 1.17>(a)< are filed [prior to or with the response], unless:

(i) Applicant is notified otherwise in an Office action,

(ii) The >reply< [response] is a reply brief submitted pursuant to § 1.193(b),

(iii) The >reply< [response] is a request for an oral hearing submitted pursuant to § 1.194(b),

(iv) The >reply< [response] is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.196, § 1.197 or § 1.304, or

(v) The application is involved in an interference declared pursuant to § 1.611.

(2) The date on which the [response, the] petition [,] and the fee have been filed is the date [of the response and also the date] for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. >A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in< [In] no case may an applicant >reply< [respond] later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to §§ 1.193(b), 1.194, 1.196 or 1.197. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action. See § 1.550(c) for extension of time in reexamination proceedings and § 1.645 for extension of time in interference proceedings.

>(3) A paper may be submitted in an application with an authorization to treat any concurrent or future reply requiring a petition for an extension of time under paragraph (a) of this section for its timely submission as incorporating such petition for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under paragraph (a) of this section for its timely submission.<

* * * * *

54. Section 1.137 is proposed to be revised to read as follows:

§ 1.137 Revival of abandoned application >or lapsed patent<.

(a) An >abandoned< application [abandoned for failure to prosecute] may be revived as a pending application >or a lapsed patent may be revived as a patent< if it is shown to the satisfaction of the Commissioner that the delay >in prosecution or payment of any portion of the required issue fee< was unavoidable. A petition to revive an >unavoidably< abandoned application >or unavoidably lapsed patent< must be [promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be] accompanied by:

[(1) A proposed response to continue prosecution of that application, or the filing of a continuing application, unless either has been previously filed;]

>(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the proposed reply requirement may be met by the filing of a continuing application. In an abandoned application or a lapsed patent, for failure to pay any portion of the required issue fee, the proposed reply must be the issue fee or any outstanding balance thereof;<

(2) The petition fee as set forth in § 1.17(l); [and]

(3) A showing that the delay was unavoidable >and that the petition was promptly filed after the applicant was notified of, or otherwise became aware of, the abandonment or lapse; and< [The showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.]

>(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.<

(b) An >abandoned< application [unintentionally abandoned for failure to prosecute] may be revived as a pending application >or lapsed patent may be revived as a patent< if the delay >in prosecution or payment of any portion of the required issue fee< was unintentional. A petition to revive an unintentionally abandoned application >or lapsed patent< must be >accompanied by<:

>(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the proposed reply requirement may be met by the filing of a continuing application. In an abandoned application or a lapsed patent, for failure to pay any portion of the required issue fee, the proposed reply must be the issue fee or any outstanding balance thereof;<

[(1) Accompanied by a proposed response to continue prosecution of that application, or filing of a continuing application, unless either has been previously filed;]

(2) [Accompanied by the] The petition fee as set forth in § 1.17(m);

(3) [Accompanied by a] A statement that the delay was unintentional. [The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office.] The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) >Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.< [Filed either:

(i) Within one year of the date on which the application became abandoned; or

(ii) Within three months of the date of the first decision on a petition to revive under paragraph (a) of this section which was filed within one year of the date on which the application became abandoned.]

(c) >In all design applications and in all nonprovisional utility or plant applications filed before June 8, 1995< [In all applications filed before June 8, 1995, and all design applications filed on or after June 8, 1995], any petition pursuant to [paragraph (a) of] this section [not filed within six months of the date of abandonment of the application,] must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought.

(d) Any request for reconsideration or review of a decision refusing to revive an >abandoned< application >or lapsed patent< upon petition filed pursuant to paragraphs (a) or (b) of this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision.

(e) The time periods set forth in this section [cannot be extended, except that the three-month period set forth in paragraph (b)(4)(ii) and the time period set forth in paragraph (d) of this section] may be extended under the provisions of § 1.136.

>(f) A provisional application, abandoned for failure to timely reply to an Office requirement, may be revived pursuant to paragraphs (a) or (b) this

section so as to be pending for a period of no longer than twelve months from its filing date. Under no circumstances will a provisional application be regarded as pending after twelve months from its filing date.<

§ 1.139 [Removed and reserved]

55. Section 1.139 is proposed to be removed and reserved.

56. Section 1.142 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.142 Requirement for restriction.

(a) If two or more independent and distinct inventions are claimed in a single application, the examiner in [his] >an Office< action shall require the applicant in [his] >a reply< [response] to that action to elect [that] >an< invention to which [his] >the< [claim] >claims< shall be restricted, this official action being called a requirement for restriction (also known as a requirement for division). [If the distinctness and independence of the inventions be clear, such] >Such< requirement will >normally< be made before any action on the merits; however, it may be made at any time before final action [in the case at the discretion of the examiner].

* * * * *

57. Section 1.144 is proposed to be revised to read as follows:

§ 1.144 Petition from requirement for restriction.

After a final requirement for restriction, the applicant, in addition to making any >reply< [response] due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested.

58. Section 1.146 is proposed to be revised to read as follows:

§ 1.146 Election of species.

In the first action on an application containing a [generic] claim >to a generic invention (genus)< and claims [restricted separately to each of] >to< more than one >patentably distinct< species embraced thereby, the examiner may require the applicant in his >or her reply< [response] to that action to elect [that] >a< species of his or her invention to which his or her claim shall be restricted if no [generic] claim >to the genus< is [held] >found to be< allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the case.

59. Section 1.152 is proposed to be revised to read as follows:

§ 1.152 Design drawings.

The design must be represented by a drawing that complies with the requirements of § 1.84, and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the [article] >design<. Appropriate >and adequate< surface shading [must] >should< be used to show the character or contour of the surfaces represented. Solid black surface shading is not permitted except when used to represent >the color black as well as< color contrast. Broken lines may be used to show visible environmental structure, but may not be used to show hidden planes and surfaces which cannot be seen through opaque materials. Alternate positions of a design component, illustrated by full and broken lines in the same view are not permitted in a design drawing. >Color photographs and color drawings will be permitted in design applications only after the granting of a petition filed under § 1.84(a)(2).< Photographs and ink drawings must not be combined >as formal drawings< in one application. Photographs submitted in lieu of ink drawings in design patent applications must comply with § 1.84(b) and must not disclose environmental structure but must be limited to the design for the article claimed. [Color drawings and color photographs are not permitted in design patent applications.]

60. Section 1.154 is proposed to be amended by revising paragraph (a) as follows:

§ 1.154 Arrangement of specification.

* * * * *

(a) Preamble, stating name of the applicant>,< [and] title of the designn>, and a brief description of the nature and intended use of the article in which the design is embodied<.

* * * * *

61. Section 1.155 is proposed to be amended by removing paragraphs (b) through (f).

§ 1.155 Issue and term of design patents.

* * * * *

(b) [Removed].

(c) [Removed].

(d) [Removed].

(e) [Removed].

(f) [Removed].

62. Section 1.163 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.163 Specification.

* * * * *

(b) Two copies of the specification (including the claim) must be submitted, but only one signed oath or declaration is required. [The second copy of the specification may be a legible carbon copy of the original.]

63. Section 1.165 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.165 Plant drawings.

(a) Plant patent drawings [should be artistically and competently executed and] must comply with the requirements of § 1.84. View numbers and reference characters need not be employed unless required by the examiner. The drawing must disclose all the distinctive characteristics of the plant capable of visual representation.

* * * * *

64. Section 1.167(b) is proposed to be removed and reserved.

§ 1.167 Examination.

* * * * *

(b) [Reserved].

65. Section 1.171 is proposed to be revised to read as follows:

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and in addition, must comply with the requirements of the rules relating to reissue applications. [The application must be accompanied by a certified copy of an abstract of title or an order for a title report accompanied by the fee set forth in § 1.19(b)(4), to be placed in the file, and by an offer to surrender the original patent (§ 1.178).]

66. Section 1.172 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.172 Applicants, assignees.

(a) A reissue oath must be signed and sworn to or declaration made by the inventor or inventors except as otherwise provided (see §§ 1.42, 1.43, 1.47), and must be accompanied by the written [assent] >consent< of all assignees, if any, owning an undivided interest in the patent, but a reissue oath may be made and sworn to or declaration made by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. >All assignees consenting to the reissue must establish their ownership interest in the patent to the satisfaction of the Commissioner. Ownership is

established by submitting to the Office documentary evidence of a chain of title from the original owner to the assignee or by specifying (e.g., reel and frame number, etc.) where such evidence is recorded in the Office. Documents submitted to establish ownership may be required to be recorded.<

* * * * *

67. Section 1.175 is proposed to be revised to read as follows:

§ 1.175 Reissue oath or declaration.

(a) [Applicants for reissue,] >The reissue oath or declaration< in addition to complying with the requirements of § 1.63, must also [file with their applications] >include< [a statement] >statement(s)< [under oath or declaration] as follows:

(1) [When] >That< the applicant [verily] believes the original patent to be wholly or partly inoperative or invalid [, stating such belief and the reasons why.

(2) When it is claimed that such patent is so inoperative or invalid ''] by reason of a defective specification or drawing, ['' particularly specifying such defects.

(3) When it is claimed that such patent is inoperative or invalid ''] >or< by reason of the patentee claiming more or less than [he] >patentee< had the right to claim in the patent, ['' distinctly specifying the excess or insufficiency in the claims.] >and<

[(4)] [Reserved]

[(5) Particularly] >(2) stating< [specifying at least one error relied upon, and how they arose or occurred] >that all errors being corrected in the reissue application up to the time of filing of the oath or declaration under this paragraph arose without deceptive intention on the part of the applicant<.

[(6)] >(b)(1) For any error corrected not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration< [Stating] >stating< that> every such error< [said errors] arose [''] without any deceptive intention [''] on the part of the applicant. >Any supplemental oath or declaration required by this paragraph must be submitted before allowance and may be submitted:

(i) With any amendment prior to allowance, or

(ii) In order to overcome a rejection under 35 U.S.C 251 made by the examiner where it is indicated that the submission of a supplemental oath or declaration as required by this paragraph will overcome the rejection.

(2) For any error sought to be corrected after allowance, a supplemental oath or declaration must accompany the requested correction stating that the error(s) to be corrected arose without any deceptive intention on the part of the applicant.

(c) Other than as set forth in paragraphs (a)(2) and (b) of this section, an oath or declaration under this section need not specifically identify the error or errors that are being corrected.<

[(7) Acknowledging the duty to disclose to the Office all information known to applicants to be material to patentability as defined in § 1.56.

(b) Corroborating affidavits or declarations of others may be filed and the examiner may, in any case, require additional information or affidavits or declarations concerning the application for reissue and its object.]

>(d) The oath or declaration required by paragraph (a) of this section may be submitted under the provisions of § 1.53(d)(1).<

68. Section 1.176 is proposed to be revised to read as follows:

§ 1.176 Examination of reissue.

[An original claim, if re-presented in the reissue application, is subject to reexamination, and the] >The< entire >reissue< application will be examined in the same manner as original applications, subject to the rules relating thereto, excepting that division will not be required >between the original claims of the patent<. Applications for reissue will be acted on by the examiner in advance of other applications, but not sooner than two months after the announcement of the filing of the reissue application has appeared in the Official Gazette.

69. Section 1.177 is proposed to be revised to read as follows:

§ 1.177 >Multiple reissue applications< [Reissue in divisions].

>(a)< The Commissioner [may] >will pursuant to< [, in] his or her discretion, >under 35 U.S.C. 251,< [cause several] >permit multiple reissue< patents to be issued for distinct and separate parts of the thing patented[,upon] >if the following conditions are met:

(1) Copending reissue applications for distinct and separate parts of the thing patented have been filed,

(2) Applicant has filed in each copending application a timely< demand [of the applicant] >by way of petition for multiple reissue patents,

(3)< [upon payment of the] >The< required >filing and issue< [fee]>fees< for each [division] >copending reissue application have been paid, and

(4) Each petition for multiple reissue patents is granted prior to issuance of a reissue patent on any of the copending reissue applications.

(b) Each petition under paragraph (a) of this section must be accompanied by:

(1) A request for the issuance of multiple reissue patents for distinct and separate parts of the thing patented,

(2) The petition fee pursuant to § 1.17(i),

(3) An identification of the other copending reissue application(s),

(4) A statement that the inventions as claimed in the copending reissue applications are distinct and separate parts of the thing patented, and

(5) A showing sufficient to establish to the satisfaction of the Commissioner that the claimed subject matter of the thing patented is in fact being divided into distinct and separate parts<. [Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of §§ 1.83 and 1.84.]

>(c) When the copending reissue applications are filed at the same time, each petition under paragraph (a) of this section, must be filed no later than the earliest submission of the reissue oath or declaration under § 1.175(a) for any of the copending reissue applications. When the copending reissue applications are filed at different times, each petition under paragraph (a) of this section must be filed no later than the earliest of:

(1) Payment of the issue fee for any of the copending reissue applications, or

(2) Submission of the reissue oath or declaration under § 1.175(a) in the later filed copending reissue application.< [On filing divisional reissue applications, they shall be referred to the Commissioner. Unless otherwise ordered by the Commissioner upon petition and payment of the fee set forth in § 1.17(i), all the divisions of a reissue will issue simultaneously, if there is any controversy as to one division, the others will be withheld from issue until the controversy is ended, unless the Commissioner orders otherwise].

>(d) Where the requirements of this section have not been complied with, the Commissioner will not permit multiple reissue patents to be issued.<

70. Section 1.181 is proposed to be amended by removing paragraphs (d), (e) and (g).

§ 1.181 Petition to the Commissioner.

* * * * *

(d) [Removed].

(e) [Removed].

* * * * *

(g) [Removed].

71. Section 1.182 is proposed to be revised to read as follows:

§ 1.182 Questions not specifically provided for.

All cases not specifically provided for in the regulations of this part will be decided in accordance with the merits of each case by or under the authority of the Commissioner, >subject to such other requirements as may be imposed< [and such decision will be communicated to the interested parties in writing]. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(h).

§ 1.184 [Removed and reserved]

72. Section 1.184 is proposed to be removed and reserved.

73. Section 1.191 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(a) Every applicant for a patent or for reissue of a patent, or every owner of a patent under reexamination[, any of] >whose claims have< [the claims of which have] been twice rejected >in a particular application or patent under reexamination< [or who has been given a final rejection (§ 1.113)], may >file an< [, upon the payment of the fee set forth in § 1.17(e),] appeal from the decision of the examiner to the Board of Patent Appeals and Interferences >by filing a notice of appeal and paying the fee set forth in § 1.17(e)< within the time allowed for >reply< [response].

(b) The >notice of< appeal in an application or reexamination proceeding must identify the rejected claim or claims appealed, and must be signed by the applicant, patent owner or duly authorized attorney or agent.

* * * * *

74. Section 1.192 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.192 Appellant's brief.

(a) >Appellant< [The appellant] shall, within [2] >two< months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for >reply< [response] to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences.

* * * * *

75. Section 1.193 is proposed to be revised to read as follows:

§ 1.193 Examiner's answer >and substitute brief<.

(a)>(1)< The primary examiner may, within such time as may be directed by the Commissioner, furnish a written statement in answer to [the] appellant's brief including such explanation of the invention claimed and of the references and grounds of rejection as may be necessary, supplying a copy to [the] appellant. If the primary examiner shall find that the appeal is not regular in form or does not relate to an appealable action, [he] >the primary examiner< shall so state [and a petition from such decision may be taken to the Commissioner as provided in § 1.181].

>(a)(2) An examiner's answer may not include a new ground of rejection.<

(b)>(1) Appellant< [The appellant] may file a [reply] >substitute appeal< brief [directed only to such new points of argument as may be raised in the] >under § 1.192 to an< examiner's answer, within two months from the date of [such answer] >the examiner's answer.< [The new points or argument shall be specifically identified in the reply brief. If the examiner determines that the reply brief is not directed only to new points of argument raised in the examiner's answer, the examiner may refuse entry of the reply brief and will so notify the appellant. If the examiner's answer expressly states that it includes a new ground of rejection, appellant must file a reply thereto within two months from the date of such answer to avoid dismissal of the appeal as to the claims subject to the new ground of rejection; such reply may be accompanied by any amendment or material appropriate to then new ground.] See § 1.136(b) for extensions of time for filing a [reply] >substitute< brief in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding. >The primary examiner may either acknowledge receipt and entry of the substitute appeal brief or reopen prosecution to respond to any new issues raised in the substitute appeal brief. A substitute examiner's answer is not permitted, except where the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.<

>(2) Where prosecution is reopened by the primary examiner after an appeal brief has been filed, an appeal brief under § 1.192 is an appropriate reply by an applicant to the reopening of prosecution if it is accompanied by a request that the appeal be reinstated. If reinstatement of the appeal is elected, no amendments, affidavits (§§ 1.131 or 1.132) or other new evidence are permitted. If reinstatement of the appeal is not elected, amendments, affidavits and other new evidence are permitted.<

76. Section 1.194 is proposed to be revised to read as follows:

§ 1.194 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which [the] appellant considers such a hearing necessary or desirable for a proper presentation of [his] >the< appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Patent Appeals and Interferences as appeals decided after oral hearing.

(b) If appellant desires an oral hearing, appellant must file>, in a separate paper,< a written request for such hearing accompanied by the fee set forth in § 1.17(g) within two months after the date of the examiner's answer. If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(g), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. See § 1.136(b) for extensions of time for requesting an oral hearing in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

(c) If no request and fee for oral hearing have been timely filed by [the] appellant, the appeal will be assigned for consideration and decision. If [the] appellant has requested an oral hearing and has submitted the fee set forth in § 1.17(g), a day of hearing will be set, and due notice thereof given to [the] appellant and to the primary examiner. >A< [Hearing] >hearing< will be held as stated in the notice, and oral argument will be limited to twenty minutes for [the] appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins. >If the Board decides that a hearing is not necessary, the Board will so notify appellant.<

77. Section 1.196 is proposed to be amended by revising paragraphs (b) and (d) to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

* * * * *

(b) Should the Board of Patent Appeals and Interferences have knowledge of any grounds not involved in the appeal for rejecting any [appealed] >pending< claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall

constitute a new >ground of< rejection of the [claims] >claim<. A new >ground of< rejection shall not be considered final for purposes of judicial review. When the Board of Patent Appeals and Interferences makes a new >ground of< rejection [of an appealed claim], the appellant>, within two months from the date of the decision,< may exercise [any one] >either< of the following two options with respect to the new ground >of rejection<:

(1) The appellant may submit an appropriate amendment of the claims so rejected or a showing of facts >relating to the claims so rejected<, or both, and have the matter reconsidered by the examiner in which event the application will be remanded to the examiner. The [statement] >new ground of rejection< shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground [for] >of< rejection stated in the decision. Should the examiner [again reject the application] >reject the claims, appellant< [the applicant] may again appeal >pursuant to §§ 1.191 through 1.195< to the Board of Patent Appeals and Interferences.

(2) The appellant may have the case reconsidered under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. The request for reconsideration [shall] >must< address the new ground [for] >of< rejection and state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. Where request for such reconsideration is made, the Board of Patent Appeals and Interferences shall reconsider the new ground [for] >of< rejection and, if necessary, render a new decision which shall include all grounds >of rejection< upon which a patent is refused. The decision on reconsideration is deemed to incorporate the earlier decision >for purposes of appeal<, except for those portions specifically withdrawn on reconsideration, and is final for the purpose of judicial review>, except when noted otherwise in the decision<.

* * * * *

[(d) Although the Board of Patent Appeals and Interferences normally will confine its decision to a review of rejections made by the examiner, should it have knowledge of any grounds for rejecting any allowed claim it may include in its decision a recommended rejection of the claim and remand the case to the examiner. In such event, the Board shall set a period, not less than one month, within which the appellant may submit to the examiner an appropriate amendment, a showing of facts or reasons, or both, in order to avoid the grounds set forth in the recommendation of the Board of Patent Appeals and Interferences. The examiner shall be bound by the recommendation and shall enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection. Should the examiner make the recommended rejection final the applicant may again appeal to the Board of Patent Appeals and Interferences.]

>(1) The Board of Patent Appeals and Interferences may require Appellant to address any matter that is deemed appropriate for a reasoned decision on the pending appeal.

(2) Appellant will be given a time limit within which to reply to the inquiry made under paragraph (d)(1) of this section.<

* * * * *

78. Section 1.197 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.197 Action following decision.

(a) After decision by the Board of Patent Appeals and Interferences, the case shall be returned to the examiner, subject to [the] appellant's right of appeal or other review, for such further action by [the] appellant or by the examiner, as the condition of the case may require, to carry into effect the decision.

(b) A single request for reconsideration or modification of the decision may be made if filed within >two months< [one month] from the date of the original decision, unless the original decision is so modified by the decision on reconsideration as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for reconsideration shall state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. See § 1.136(b) for extensions of time for seeking reconsideration in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

* * * * *

79. Section 1.291 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.291 Protests by the public against pending applications.

* * * * *

(c) A member of the public filing a protest in an application under paragraph (a) of this section will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office may communicate with the applicant regarding any protest and may require the applicant to >reply< [respond] to specific questions raised by the protest. In the absence of a request by the Office, an applicant has no duty to, and need not, >reply< [respond] to a protest. The limited involvement of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest, and no further submission on behalf of the protestor will be considered >,except for additional prior art, or< unless such submission raises new issues which could not have been earlier presented.

80. Section 1.294 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.294 Examination of request for publication of a statutory invention registration and patent application to which the request is directed.

* * * * *

(b) Applicant will be notified of the results of the examination set forth in paragraph (a) of this section. If the requirements of § 1.293 and this section are not met by the request filed, the notification to applicant will set a period of time within which to comply with the requirements in order to avoid abandonment of the application. If the application does not meet the requirements of 35 U.S.C. 112, the notification to applicant will include a rejection under the appropriate provisions of 35 U.S.C. 112. The periods for >reply< [response] established pursuant to this section are subject to the extension of time provisions of § 1.136. After >reply< [response] by the applicant, the application will again be considered for publication of a statutory invention registration. If the requirements of § 1.293 and this section are not timely met, the refusal to publish will be made final. If the requirements of 35 U.S.C. 112 are not met, the rejection pursuant to 35 U.S.C. 112 will be made final.

* * * * *

81. Section 1.304 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.304 Time for appeal or civil action.

(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for [consideration] >reconsideration< or modification of the decision is filed within the time period provided under § 1.197(b) or § 1.658(b), the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences, the time for filing a cross-appeal or cross-action expires:

(i) 14 days after service of the notice of appeal or the summons and complaint, or

(ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

* * * * *

82. Section 1.312 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.312 Amendments after allowance.

* * * * *

(b) Any amendment pursuant to paragraph (a) of this section filed after the date the issue fee is paid must be accompanied by a petition including the fee set forth in § 1.17(i) and a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented. >For reissue applications, see § 1.175(b), which requires a supplemental oath or declaration to accompany the amendment.<

83. Section 1.313 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 1.313 Withdrawal from issue.

* * * * *

>(c) Unless an applicant receives written notification that the application has been withdrawn from issue at least two weeks prior to the projected date of issue, applicant should expect that the application will issue as a patent.<

84. Section 1.316 paragraphs (b) through (f) are proposed to be removed.

§ 1.316 Application abandoned for failure to pay issue fee.

* * * * *

(b) [Removed].

(c) [Removed].

(d) [Removed].

(e) [Removed].

(f) [Removed].

85. Section 1.317 paragraphs (b) through (f) are proposed to be removed.

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

* * * * *

(b) [Removed].

(c) [Removed].

(d) [Removed].

(e) [Removed].

(f) [Removed].

§ 1.318 [Removed and reserved].

86. Section 1.318 is proposed to be removed and reserved.

87. Section 1.324 is proposed to be revised to read as follows:

§ 1.324 Correction of inventorship in patent.

>(a) Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his or her part, < [Whenever a patent is issued and it appears that the correct inventor or inventors were not named through error without deceptive intention on the part of the actual inventor or inventors,] the Commissioner may, on petition [of all the parties and the assignees and satisfactory proof of the facts and payment of the fee set forth in § 1.20(b)], or on order of a court before which such matter is called in question, issue a certificate naming only the actual inventor or inventors. A >petition< [request] to correct inventorship of a patent involved in an interference shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.

>(b) Any petition pursuant to paragraph (a) of this section must be accompanied by:

(1) A statement from each person who is being added as an inventor and from each person who is being deleted as an inventor that the inventorship error occurred without any deceptive intention on their part;

(2) A statement from the current named inventors who have not submitted a statement under paragraph (b)(1) of this section either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change;

(3) A statement from all assignees of the parties submitting a statement under paragraphs (b)(1) and (b)(2) of this section agreeing to the change of inventorship in the patent; such statement must comply with the requirements of § 3.73(b); and

(4) The fee set forth in § 1.20(b).<

§ 1.325 [Removed and reserved]

88. Section 1.325 is proposed to be removed and reserved.

§ 1.351 [Removed and reserved]

89. Sections 1.351 is proposed to be removed and reserved.

§ 1.352 [Removed and reserved]

90. Section 1.352 is proposed to be removed and reserved.

91. Section 1.366 is proposed to be amended by revising paragraphs (b) through (d) to read as follows:

§ 1.366 Submission of maintenance fees.

* * * * *

(b) A maintenance fee and any necessary surcharge submitted for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid and may be paid in the manner set forth in § 1.23 or by an authorization to charge a deposit account established pursuant to § 1.25. Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account must be submitted within the periods set forth in § 1.362(d), (e), or (f). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to a petition filed under § 1.378. Any authorization to charge a deposit account must authorize the immediate charging of the maintenance fee and any necessary surcharge to the deposit account. Payment of less than the required amount, payment in a manner other than that set forth in the filing of an authorization to charge a deposit account having insufficient funds will not constitute payment of a maintenance fee or surcharge on a patent. The [certificate] procedures of either § 1.8 or § 1.10 may be utilized in paying maintenance fees and any necessary surcharges.

(c) In submitting maintenance fees and any necessary surcharges, identification of the patents for which maintenance fees are being paid must include the following:

(1) The patent number, and

(2) The [serial] >application< number of the United States application for the patent on which the maintenance fee is being paid.

(d) Payment of maintenance fees and any surcharges should identify the fee being paid for each patent as to whether it is the 3½-,7½-, or 11½-year fee, whether small entity status is being

changed or claimed, the amount of the maintenance fee and any surcharge being paid, and any assigned payor number[, the patent issue date and the United States application filing date]. If the maintenance fee and any necessary surcharge is being paid on a reissue patent, the payment must identify the reissue patent by reissue patent number and reissue application [serial] number as required by paragraph (c) of this section and should also include the original patent number[, the original patent issue date, and the original United States application filing date].

* * * * *

92. Section 1.377 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.377 Review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

* * * * *

(c) Any petition filed under this section must comply with the requirements of paragraph (b) of § 1.181 and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. [Such petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office.]

93. Section 1.378 is proposed to be amended by revising paragraph (d) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

* * * * *

(d) Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. [Such petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office.]

* * * * *

94. Section 1.425 is proposed to be revised to read as follows:

§ 1.425 Filing by other than inventor.

[(a) If a joint inventor refuses to join in an international application which designates the United States of America or cannot be found or reached after diligent effort, the international application which designates the United States of America may be filed by the other inventor on behalf of himself or herself and the omitted inventor. Such an international application which designates the United States of America must be accompanied by proof of the pertinent facts and must state the last known address of the omitted inventor. The Patent and Trademark Office shall forward notice of the filing of the international application to the omitted inventor at said address.

(b) Whenever an inventor refuses to execute an international application which designates the United States of America, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may file the international application on behalf of and as agent for the inventor. Such an international application which designates the United States of America must be accompanied by proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage and must state the last known address of the inventor. The assignment, written agreement to assign or other evidence of proprietary interest, or a verified copy thereof, must be filed in the Patent and Trademark Office. The Office shall forward notice of the filing of the application to the inventor at the address stated in the application.] Where an international application which designates the United States of America is filed and where one or more inventors refuse to sign the request for the international application or could not be found or reached after diligent effort, the request need not be signed by such inventor if it is signed by another applicant. Such international application must be accompanied by a statement explaining to the satisfaction of the Commissioner the lack of the signature concerned.

95. Section 1.484 is proposed to be amended by revising paragraphs (d) through (f) to read as follows:

§ 1.484 Conduct of international preliminary examination.

* * * * *

(d) The International Preliminary Examining Authority will establish a written opinion if any defect exists or if the claimed invention lacks novelty, inventive step or industrial applicability and will set a non-extendable time limit in the written opinion for the applicant to >reply< [respond].

(e) If no written opinion under paragraph (d) of this section is necessary, or after any written opinion and the >reply< [response] thereto or the expiration of the time limit for >reply< [response] to such written opinion, an international preliminary examination report will be established by the International Preliminary Examining Authority. One copy will be submitted to the International Bureau and one copy will be submitted to the applicant.

(f) An applicant will be permitted a personal or telephone interview with the examiner, which must be conducted during the non-extendable time limit for >reply< [response] by the applicant to a written opinion. Additional interviews may be conducted where the examiner determines that such additional interviews may be helpful to advancing the international preliminary examination procedure. A summary of any such personal or telephone interview must be filed by the applicant as a part of the >reply< [response] to the written opinion or, if applicant files no >reply< [response], be made of record in the file by the examiner.

96. Section 1.485 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.485 Amendments by applicant during international preliminary examination.

(a) The applicant may make amendments at the time of filing of the Demand and within the time limit set by the International Preliminary Examining Authority for >reply< [response] to any notification under § 1.484(b) or to any written opinion. Any such amendments must:

(1) Be made by submitting a replacement sheet for every sheet of the application which differs from the sheet it replaces unless an entire sheet is cancelled, and

(2) Include a description of how the replacement sheet differs from the replaced sheet.

* * * * *

97. Section 1.488 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.488 Determination of unity of invention before the International Preliminary Examining Authority.

* * * * *

(b) If the International Preliminary Examining Authority considers that the international application does not comply with the requirement of unity of invention, it may:

(1) Issue a written opinion and/or an international preliminary examination report, in respect of the entire international application and indicate that unity of invention is lacking and specify the reasons therefor without extending an invitation to restrict or pay additional fees. No international preliminary examination will be conducted on inventions not previously

searched by an International Searching Authority.

(2) Invite the applicant to restrict the claims or pay additional fees, pointing out the categories of the invention found, within a set time limit which will not be extended. No international preliminary examination will be conducted on inventions not previously searched by an International Preliminary Examining Authority, or

(3) If applicant fails to restrict the claims or pay additional fees within the time limit set for >reply< [response], the International Preliminary Examining Authority will issue a written opinion and/or establish an international preliminary examination report on the main invention and shall indicate the relevant facts in the said report. In case of any doubt as to which invention is the main invention, the invention first mentioned in the claims and previously searched by an International Searching Authority shall be considered the main invention.

* * * * *

98. Section 1.492 is proposed to be amended by adding a new paragraph (g) to read as follows:

§ 1.492 National stage fees.

* * * * *

>(g) If the additional fees required by paragraphs (b), (c), and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency.<

99. Section 1.494 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.494 Entering the national stage in the United States of America as a Designated Office.

* * * * *

(c) If applicant complies with paragraph (b) of this section before expiration of 20 months from the priority date but omits:

(1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 20 months after the priority date. A copy of the notification mailed to applicant should accompany any >reply< [response] thereto submitted to the Office.

* * * * *

100. Section 1.495 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.495 Entering the national stage in the United States of America as an Elected Office.

* * * * *

(c) If applicant complies with paragraph (b) of this section before expiration of 30 months from the priority date but omits:

(1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 30 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 30 months after the priority date. A copy of the notification mailed to applicant should accompany any >reply< [response] thereto submitted to the Office.

* * * * *

101. Section 1.510 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1.510 Request for reexamination.

* * * * *

(e) A request filed by the patent owner may include a proposed amendment in accordance with [§ 1.121(f)] >§ 1.530(d)<.

102. Section 1.530 is proposed to be amended by revising the heading and paragraphs (a) and (d) to read as follows:

§ 1.530 Statement and [amendment] >reply< by patent owner.

(a) Except as provided in § 1.510(e), no statement or other >reply< [response] by the patent owner shall be filed prior to the determinations made in accordance with §§ 1.515 or 1.520. If a premature statement or other >reply< [response] is filed by the patent owner it will not be acknowledged or considered in making the determination.

* * * * *

[(d) Any proposed amendment to the description and claims must be made in accordance with § 1.121(f). No amendment may enlarge the scope of the claims of the patent or introduce new matter. No amended or new claims may be proposed for entry in an expired patent. Moreover, no amended or new claims will be incorporated into the patent by certificate issued after the expiration of the patent.]

>(d) *Amendments in reexamination proceedings:* Amendments in reexamination proceedings are made by filing a paper, in compliance with paragraph (d)(5) of this section, directing that specified amendments be made.

(1) *Specification other than claims:* Amendments to the specification other than claims may only be made as follows:

(i) The precise point in the specification must be indicated where an amendment is to be made.

(ii) Amendments must be made by submission of the entire text of the rewritten paragraph(s) with markings pursuant to paragraph (d)(1)(iv) of this section.

(iii) Each submission of an amendment to the specification of the patent must include all amendments to the specification relative to the patent as of the date of the submission. This would include amendments to the specification of the patent submitted for the first time as well as any previously submitted amendments that are still desired. Any previously submitted amendments to the specification that are no longer desired must not be included in the submission.

(iv) Underlining below the subject matter added to the patent and brackets around the subject matter deleted from the patent are to be used to mark the amendments being made.

(2) *Claims:* Amendments to the claims are made as follows:

(i)(A) The amendment must include the entire text of each patent claim which is amended and each proposed claim with marking pursuant to paragraph (d)(2)(i)(C) of this section, except a patent or proposed claim should be cancelled by a statement cancelling the patent or proposed claim without presentation of the text of the patent or proposed claim.

(B) Patent claims must not be renumbered and the numbering of any

claims proposed to be added to the patent must follow the number of the highest numbered patent claim.

(C) Underlining below the subject matter added to the patent and brackets around the subject matter deleted from the patent are to be used to mark the amendments being made. If a claim is amended pursuant to paragraph (d)(2)(i)(A) of this section, a parenthetical expression ''amended,'' ''twice amended,'' *etc.*, should follow the original claim number.

(ii) Each amendment submission must set forth the status, as of the date of the amendment, of all patent claims, of all claims currently proposed, and of all previously proposed claims that are no longer being proposed.

(iii) Each amendment when originally submitted must be accompanied by an explanation of the support in the disclosure of the patent for the amendment along with any additional comments on page(s) separate from the page(s) containing the amendment.

(iv) Each submission of an amendment to any claim (patent claims and all proposed claims) must include all amendments to the claims as of the date of the submission. This would include amendments to the claims submitted for the first time as well as any previously submitted amendments to the claims that are still desired. Any previously submitted amendments to the claims that are no longer desired must not be included in the submission. A copy of any patent claims that have not been amended are not to be presented with each amendment submission.

(v) The failure to submit a copy of any proposed claim will be construed as a direction to cancel that claim.

(3) No amendment may enlarge the scope of the claims of the patent or introduce new matter. No amendment may be proposed for entry in an expired patent. Moreover, no amendment will be incorporated into the patent by certificate issued after the expiration of the patent.

(4) Amendments made to a patent during a reexamination proceeding will not be effective until a reexamination certificate is issued.

(5) The form of replies, amendments, briefs, appendices and other papers must be in accordance with the following requirements. All documents, including any amendments or corrections thereto, must be in the English language. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written either by a typewriter or mechanical printer in permanent dark ink or its equivalent in portrait orientation on flexible, strong, smooth, non-shiny, durable, and white paper. All printed matter must appear in at least 11 point type. All of the papers must be presented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes and electronic reproduction by use of digital imaging and optical character recognition. If the papers are not of the required quality, substitute typewritten or mechanically printed papers of suitable quality will be required. The papers, including the drawings, must have each page plainly written on only one side of a sheet of paper. The sheets of paper must be the same size and either 21.0 cm. by 29.7 cm. (DIN size A4) or 21.6 cm. by 27.9 cm. (8½ by 11 inches). Each sheet must include a top margin of at least 2.0 cm. (¾ inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 2.0 cm. (¾ inch), and a bottom margin of at least 2.0 cm. (¾ inch), and no holes should be made in the sheets as submitted. The lines must be 1½ or double spaced. The pages must be numbered consecutively, starting with 1, the numbers being centrally located above or preferably, below, the text.

(6) *Drawings:* The original patent drawing sheets may not be altered. Any proposed change to the patent drawings must be by way of a new sheet of drawings with the amended figures identified as ''amended'' and with added figures identified as ''new'' for each sheet changed submitted in compliance with § 1.84<

* * * * *

103. Section 1.550 is proposed to be amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 1.550 Conduct of reexamination proceedings.

(a) All reexamination proceedings, including any appeals to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office. After issuance of the reexamination order and expiration of the time for submitting any >replies< [responses] thereto, the examination will be conducted in accordance with §§ 1.104 through 1.116 and will result in the issuance of a reexamination certificate under § 1.570.

(b) The patent owner will be given at least [30] >thirty< days to >reply< [respond] to any Office action. Such >reply< [response] may include further statements in >reply< [response] to any rejections and/or proposed amendments or new claims to place the patent in a condition where all claims, if amended as proposed, would be patentable.

* * * * *

(d) If the patent owner fails to file a timely and appropriate >reply< [response] to any Office action, the reexamination proceeding will be terminated and the Commissioner will proceed to issue a certificate under § 1.570 in accordance with the last action of the Office.

* * * * *

104. Section 1.560 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.560 Interviews in reexamination proceedings.

* * * * *

(b) In every instance of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the patent owner. An interview does not remove the necessity for >reply< [response] to Office actions as specified in § 1.111.

105. Section 1.770 is proposed to be revised to read as follows:

§ 1.770 Express withdrawal of application for extension of patent term.

An application for extension of patent term may be expressly withdrawn before a determination is made pursuant to § 1.750 by filing in the Office, in duplicate, a written declaration of withdrawal signed by the owner of record of the patent or its agent. An application may not be expressly withdrawn after the date permitted for >reply< [response] to the final determination on the application. An express withdrawal pursuant to this section is effective when acknowledged in writing by the Office. The filing of an express withdrawal pursuant to this section and its acceptance by the Office does not entitle applicant to a refund of the filing fee § 1.20(j)) or any portion thereof.

106. Section 1.785 is proposed to be amended by revising paragraph (d) to read as follows:

§ 1.785 Multiple applications for extension of term of the same patent or different patents for the same regulatory review period for a product.

* * * * *

(d) An application for extension shall be considered complete and formal regardless of whether it contains the identification of the holder of the regulatory approval granted with respect to the regulatory review period or express and exclusive authorization from the holder of the regulatory

approval to rely on the regulatory review period for extension. When an application contains such information, or is amended to contain such information, it will be considered in determining whether an application is eligible for an extension under this section. A request may be made of any applicant to supply such information within a non-extendable period of not less than one [(1)] month whenever multiple applications for extension of more than one patent are received and rely upon the same regulatory review period. Failure to provide such information within the period for >reply< [response] set shall be regarded as conclusively establishing that the applicant is not the holder of the regulatory approval and is not expressly and exclusively authorized by the holder of the regulatory approval to seek the extension being sought.

* * * * *

107. Section 1.804 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.804 Time of making an original deposit.

* * * * *

(b) When the original deposit is made after the effective filing date of an application for patent, the applicant shall promptly submit a [verified] statement from a person in a position to corroborate the fact, [and shall state] >stating<, that the biological material which is deposited is a biological material specifically identified in the application as filed[, except if the person is an attorney or agent registered to practice before the Office, in which case the statement need not be verified].

108. Section 1.805 is proposed to be amended by revising paragraph (c) to read as follows:

§ 1.805 Replacement or supplement of deposit.

* * * * *

(c) A request for a certificate of correction under this section shall not be granted unless the request is made promptly after the replacement or supplemental deposit has been made and:

(1) Includes a [verified] statement of the reason for making the replacement or supplemental deposit;

(2) Includes a [verified] statement from a person in a position to corroborate the fact, and [shall state] >stating<, that the replacement or supplemental deposit is of a biological material which is identical to that originally deposited;

(3) Includes a [verified] showing that the patent owner acted diligently[–]>:<

(i) In the case of a replacement deposit, in making the deposit after receiving notice that samples could no longer be furnished from an earlier deposit, or

(ii) In the case of a supplemental deposit, in making the deposit after receiving notice that the earlier deposit had become contaminated or had lost its capability to function as described in the specification;

(4) Includes a [verified] statement that the term of the replacement or supplemental deposit expires no earlier than the term of the deposit being replaced or supplemented; and

(5) Otherwise establishes compliance with these regulations[, except that if the person making one or more of the required statements or showing is an attorney or agent registered to practice before the Office, that statement or showing need not be verified].

* * * * *

PART 3—ASSIGNMENT, RECORDING, AND RIGHTS OF ASSIGNEE

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

Authority: 15 U.S.C. 1123; 35 U.S.C. 6.

109a. Section 3.11 is proposed to be revised to read as follows:

§ 3.11 Documents which will be recorded.

>(a)< Assignments of applications, patents, and registrations, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, will be recorded in the Office. Other documents, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, affecting title to applications, patents, or registrations, will be recorded as provided in this part or at the discretion of the Commissioner.

>(b) Executive Order 9424 (3 CFR 1943—1948 Comp.) requires the several departments and other executive agencies of the Government, including Government-owned or Government-controlled corporations, to forward promptly to the Commissioner of Patents and Trademarks for recording all licenses, assignments, or other interests of the Government in or under patents or patent applications. Assignments and other documents affecting title to patents or patent applications and documents not affecting title to patents or patent applications required by Executive order 9424 (3 CFR 1943—1948 Comp.) to be filed will be recorded as provided in this Part.<

110. Section 3.26 is proposed to be revised to read as follows:

§ 3.26 English language requirement.

The Office will accept and record non-English language documents only if accompanied by [a verified] >an< English translation signed by the individual making the translation.

110a. Section 3.27 is proposed to be revised to read as follows:

§ 3.27 Mailing address for submitting documents to be recorded.

>(a) Except as provided in paragraph (b) of this section, documents< [Documents] and cover sheets to be recorded should be addressed to the Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231, unless they are filed together with new applications or with a petition under § 3.81(b).

>(b) A document required by Executive Order 9424 (3 CFR 1943—1948 Comp.) to be filed which does not affect title and is so identified in the cover sheet (see § 3.31(c)(2)) must be addressed and mailed to the Commissioner of Patents and Trademarks, Box Government Interest, Washington, DC 20231.<

111. Section 3.31 is proposed to be amended by adding paragraph (c) to read as follows:

§ 3.31 Cover sheet content.

* * * * *

>(c) Each patent cover sheet required by § 3.28 seeking to record a governmental interest as provided by § 3.11(b) must:

(1) Indicate that the document is to be recorded on the governmental register, and, if applicable, that the document is to be recorded on the Secret Register (see § 3.58), and

(2) Indicate, if applicable, that the document to be recorded is not a document affecting title (see § 3.41(b)).<

112. Section 3.41 is proposed to be revised to read as follows:

§ 3.41 Recording fees.

>(a)< All requests to record documents must be accompanied by the appropriate fee. >Except as provided in paragraph (b) of this section, a< [A] fee is required for each application, patent and registration against which the document is recorded as identified in the cover sheet. The recording fee is set in § 1.21(h) of this [Chapter] >chapter< for patents and in § 2.6(q) of this [Chapter] >chapter< for trademarks.

>(b) No fee is required for each patent application and patent against which a document required by Executive Order 9424 (3 CFR 1943–1948 Comp.) is to be filed if:

(1) The document does not affect title and is so identified in the cover sheet (see § 3.31(c)(2));

(2) The cover sheet is filed in a format approved by the Office; and

(3) The document and cover sheet are mailed to the Office in compliance with § 3.27(b).<

113. Section 3.51 is proposed to be revised to read as follows:

§ 3.51 Recording date.

The date of recording of a document is the date the document meeting the requirements for recording set forth in this [Part] >part< is filed in the Office. A document which does not comply with the identification requirements of 3.21 will not be recorded. Documents not meeting the other requirements for recording, for example, a document submitted without a completed cover sheet or without the required fee, will be returned for correction to the sender where a correspondence address is available. The returned papers, stamped with the original date of receipt by the Office, will be accompanied by a letter which will indicate that if the returned papers are corrected and resubmitted to the Office within the time specified in the letter, the Office will consider the original date of filing of the papers as the date of recording of the document. The [certification] procedure under either § 1.8 or § 1.10 of this [Chapter] >chapter< may be used for resubmissions of returned papers to have the benefit of the date of deposit in the United States Postal Service. If the returned papers are not corrected and resubmitted within the specified period, the date of filing of the corrected papers will be considered to be the date of recording of the document. The specified period to resubmit the returned papers will not be extended.

114. Section 3.58 is proposed to be added to read as follows:

§ 3.58 Governmental registers.

(a) The Office will maintain a Departmental Register to record governmental interests required to be recorded by Executive Order 9424 (3 CFR 1943–1948 Comp.). This Departmental Register will not be open to public inspection but will be available for examination and inspection by duly authorized representatives of the Government. Governmental interests recorded on the Departmental Register will be available for public inspection as provided in § 1.12.

(b) The Office will maintain a Secret Register to record governmental interests required to be recorded by Executive Order 9424 (3 CFR 1943–1948 Comp.). Any instrument to be recorded will be placed on this Secret Register at the request of the department or agency submitting the same. No information will be given concerning any instrument in such record or register, and no examination or inspection thereof or of the index thereto will be permitted, except on the written authority of the head of the department or agency which submitted the instrument and requested secrecy, and the approval of such authority by the Commissioner of Patents and Trademarks. No instrument or record other than the one specified may be examined, and the examination must take place in the presence of a designated official of the Patent and Trademark Office. When the department or agency which submitted an instrument no longer requires secrecy with respect to that instrument, it must be recorded anew in the Departmental Register.<

115. Section 3.73 is proposed to be amended by revising paragraph (b) to read as follows:

§ 3.73 Establishing right of assignee to prosecute.

* * * * *

(b) When the assignee of the entire right, title and interest seeks to take action in a matter before the Office with respect to a patent application, trademark application, patent registration, or reexamination proceeding, the assignee must establish its ownership of the property to the satisfaction of the Commissioner. Ownership is established by submitting to the Office documentary evidence of a chain of title from the original owner to the assignee >(*e.g.,* copy of an executed assignment submitted for recording, *etc.*)< or by specifying (*e.g.,* reel and frame number, *etc.*) where such evidence is recorded in the Office. Documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. [In addition, the assignee of a patent application or patent must submit a statement specifying that the evidentiary documents have been reviewed and certifying that, to the best of assignee's knowledge and belief, title is in the assignee seeking to take the action.]

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

116. The authority citation for Part 5 is proposed to be revised to read as follows:

Authority: 35 U.S.C. 6, 41, 181–188; 22 U.S.C. 2751 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2011 *et seq.*.

117. Section 5.1 is proposed to be revised to read as follows:

§ 5.1 [Defense inspection of certain applications]>Correspondence<.

[(a) The provisions of this part shall apply to both national and international applications filed in the Patent and Trademark Office and, with respect to inventions made in the United States, to applications filed in any foreign country or any international authority other than the United States Receiving Office. The

(1) filing of a national or an international application in a foreign country or with an international authority other than the United States Receiving Office, or

(2) transmittal of an international application to a foreign agency or an international authority other than the United States Receiving Office is considered to be a foreign filing within the meaning of Chapter 17 of Title 35, United States Code.

(b) In accordance with the provisions of 35 U.S.C. 181, patent applications containing subject matter the disclosure of which might be detrimental to the national security are made available for inspection by defense agencies as specified in said section. Only applications obviously relating to national security, and applications within fields indicated to the Patent and Trademark Office by the defense agencies as so related, are made available. The inspection will be made only by responsible representatives authorized by the agency to review applications. Such representatives are required to sign a dated acknowledgment of access accepting the condition that information obtained from the inspection will be used for no purpose other than the administration of 35 U.S.C. 181–188. Copies of applications may be made available to such representatives for inspection outside the Patent and Trademark Office under conditions assuring that the confidentiality of the applications will be maintained, including the conditions that: (1) All copies will be returned to the Patent and Trademark Office promptly if no secrecy order is imposed, or upon rescission of such order if one is imposed, and (2) no additional copies will be made by the defense agencies. A record of the removal and return of copies made available for defense inspection will be maintained by the Patent and Trademark Office. Applications relating to atomic energy are made available to the Department of Energy as specified in 1.14 of this chapter.]

> All correspondence in connection with this part, including petitions, must

be addressed to ''Assistant Commissioner for Patents (Attention Licensing and Review), Washington, DC 20231.''<

118. Section 5.2 proposed to be amended by revising paragraph (b) and removing paragraphs (c) and (d) to read as follows:

§ 5.2 Secrecy order.

* * * * *

(b) [The secrecy order is directed to the applicant, his successors, any and all assignees, and their legal representatives; hereinafter designated as principals.] >Any request for compensation as provided in 35 U.S.C. 183 must not be made to the Patent and Trademark Office, but directly to the department or agency which caused the secrecy order to be issued.<

[(c) A copy of the secrecy order will be forwarded to each principal of record in the application and will be accompanied by a receipt, identifying the particular principal, to be signed and returned.

(d) The secrecy order is directed to the subject matter of the application. Where any other application in which a secrecy order has not been issued discloses a significant part of the subject matter of the application under secrecy order, the other application and the common subject matter should be called to the attention of the Patent and Trademark Office. Such a notice may include any material such as would be urged in a petition to rescind secrecy orders on either of the applications.]

119. Section 5.3 is proposed to be amended by revising paragraph (c) to read as follows:

§ 5.3 Prosecution of application under secrecy orders; withholding patent.

* * * * *

(c) When the national application is found to be in condition for allowance except for the secrecy order the applicant and the agency which caused the secrecy order to be issued will be notified. This notice (which is not a notice of allowance under § 1.311 of this chapter) does not require >reply< [response] by the applicant and places the national application in a condition of suspension until the secrecy order is removed. When the secrecy order is removed the Patent and Trademark Office will issue a notice of allowance under § 1.311 of this chapter, or take such other action as may then be warranted.

* * * * *

120. Section 5.4 is proposed to be amended by revising paragraphs (a) and (d) to read as follows:

§ 5.4 Petition for rescission of secrecy order.

(a) A petition for rescission or removal of a secrecy order may be filed by, or on behalf of, any principal affected thereby. Such petition may be in letter form, and it must be in duplicate. [The petition must be accompanied by one copy of the application or an order for the same, unless a showing is made that such a copy has already been furnished to the department or agency which caused the secrecy order to be issued.]

* * * * *

(d) [Unless based upon facts of public record, the petition must be verified.] > Appeal to the Secretary of Commerce, as provided by 35 U.S.C. 181, from a secrecy order cannot be taken until after a petition for rescission of the secrecy order has been made and denied.<

121. Section 5.5 is proposed to be amended by revising paragraphs (b) and (e) to read as follows:

§ 5.5 Permit to disclose or modification of secrecy order.

* * * * *

(b) Petitions for a permit or modification must fully recite the reason or purpose for the proposed disclosure. Where any proposed disclosee is known to be cleared by a defense agency to receive classified information, adequate explanation of such clearance should be made in the petition including the name of the agency or department granting the clearance and the date and degree thereof. The petition must be filed in duplicate [and be accompanied by one copy of the application or an order for the same, unless a showing is made that such a copy has already been furnished to the department or agency which caused the secrecy order to be issued].

* * * * *

(e) [The permit or modification may contain conditions and limitations.] >Organizations requiring consent for disclosure of applications under secrecy order to persons or organizations in connection with repeated routine operation may petition for such consent in the form of a general permit. To be successful such petitions must ordinarily recite the security clearance status of the disclosees as sufficient for the highest classification of material that may be involved.<

§ 5.6 [Removed and reserved]

122. Section 5.6 is proposed to be removed and reserved.

§ 5.7 [Removed and reserved]

123. Section 5.7 is proposed to be removed and reserved.

§ 5.8 [Removed and reserved]

124. Section 5.8 is proposed to be removed and reserved.

125. Section 5.11 is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 5.11 License for filing in a foreign country an application on an invention made in the United States or for transmitting international application.

* * * * *

(b) The license from the Commissioner of Patents and Trademarks referred to in paragraph (a) of this section would also authorize the export of technical data abroad for purposes relating to the preparation, filing or possible filing and prosecution of a foreign patent application without separately complying with the regulations contained in 22 CFR Parts [121] >120< through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR [Part 379 (Regulations of the Bureau of Export Administration, Department of Commerce)] >Parts 768–799 (Export Administration Regulations of the Department of Commerce)< and 10 CFR Part 810 [(Foreign Atomic Energy Programs of the Department of Energy)] >(Assistance to Foreign Atomic Energy Activities—Regulations of the Department of Energy)<.

(c) Where technical data in the form of a patent application, or in any form, is being exported for purposes related to the preparation, filing or possible filing and prosecution of a foreign patent application, without the license from the Commissioner of Patents and Trademarks referred to in paragraphs (a) or (b) of this section, or on an invention not made in the United States, the export regulations contained in 22 CFR Parts [121] >120< through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR [Part 379 (Regulations of the Bureau of Export Administration, Department of Commerce)] >Parts 768–799 (Export Administration Regulations of the Department of Commerce)< and 10 CFR Part 810 [(Foreign Atomic Energy Programs of the Department of Energy)] >(Assistance to Foreign Atomic Energy Activities—Regulations of the Department of Energy)< must be complied with unless a license is not required because a United States application was on file at the time of export for at least six months without a secrecy order under § 5.2 being placed thereon. The term ''exported'' means export as it is defined in 22 CFR [Parts 121 through 130] >Part 120<, 15 CFR

Part [379] >779< and >activities covered by< 10 CFR Part 810.

* * * * *

126. Section 5.13 is proposed to be revised to read as follows:

§ 5.13 Petition for license; no corresponding application.

If no corresponding national or international application has been filed in the United States, the petition for license under § 5.12(b) must be accompanied by the required fee (§ 1.17(h)), if expedited handling of the petition is also sought, and a legible copy of the material upon which a license is desired. This copy will be retained as a measure of the license granted. [For assistance in the identification of the subject matter of each license so issued, it is suggested that the petition be submitted in duplicate and provide a title and other description of the material. The duplicate copy of the petition will be returned with the license or other action on the petition.]

127. Section 5.14 is proposed to be amended by revising paragraph (a) to read as follows:

§ 5.14 Petition for license; corresponding U.S. application.

(a) When there is a corresponding United States application on file, a petition for license under § 5.12(b) must include the required fee (§ 1.17(h)), if expedited handling of the petition is also sought, and must identify this application by [serial] >application< number, filing date, inventor, and title, but a copy of the material upon which the license is desired is not required. The subject matter licensed will be measured by the disclosure of the United States application. [Where the title is not descriptive, and the subject matter is clearly of no interest from a security standpoint, time may be saved by a short statement in the petition as to the nature of the invention.]

* * * * *

128. Section 5.15 is proposed to be amended by revising paragraph (a) to read as follows.

§ 5.15 Scope of license.

(a) Applications or other materials reviewed pursuant to §§ 5.12 through 5.14, which were not required to be made available for inspection by defense agencies under 35 U.S.C. 181 and § 5.1, will be eligible for a license of the scope provided in this paragraph. This license permits subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign patent application, if such changes to the application do not alter the general nature of the invention in a manner which would require the United States application to have been made available for inspection under 35 U.S.C. 181 and § 5.1. [This license also covers the inventions disclosed in foreign applications which have been granted a license under this part prior to April 4, 1984, and which were not subject to security inspection under 35 U.S.C. 181 and § 5.1.] Grant of this license authorizing the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency when the subject matter of the foreign or international application corresponds to that of the domestic application. This license includes authority:

(1) To export and file all duplicate and formal application papers in foreign countries or with international agencies;

(2) To make amendments, modifications, and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the application; and

(3) To take any action in the prosecution of the foreign or international application provided that the adding of subject matter of taking of any action under paragraphs (a)(1) or (2) of this section does not change the general nature of the invention disclosed in the application in a manner which would require such application to have been made available for inspection under 35 U.S.C. 181 and § 5.1 by including technical data pertaining to:

(i) Defense services or articles designated in the United States Munitions List applicable at the time of foreign filing, the unlicensed exportation of which is prohibited pursuant to the Arms Export Control Act, as amended and 22 CFR Parts [121] >120< through 130; or

(ii) Restricted Data, sensitive nuclear technology or technology useful for the production or utilization of special nuclear material or atomic energy, dissemination of which is subject to restrictions of the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as implemented by the regulations [for Unclassified Activities in Assistance to Foreign Atomic Energy Activities] >of the Department of Energy for assistance to foreign energy activities<, 10 CFR Part 810, in effect at the time of foreign filing.

* * * * *

§ 5.16 [Removed and reserved]

129. Section 5.16 is proposed to be removed and reserved.

§ 5.17 [Removed and reserved]

130. Section 5.17 is proposed to be revised and removed.

131. Section 5.18 is proposed to be revised to read as follows:

§ 5.18 Arms, ammunition, and implements of war.

(a) The exportation of technical data relating to arms, ammunition, and implements of war generally is subject to the International Traffic in Arms Regulations of the Department of State (22 CFR Parts [121] >120< through [128] >130<); the articles designated as arms, ammunition, and implements of war are enumerated in the U.S. Munitions List, 22 CFR [121.01] >Part 121<. However, if a patent applicant complies with regulations issued by the Commissioner of Patents and Trademarks under 35 U.S.C. 184, no separate approval from the Department of State is required unless the applicant seeks to export technical data exceeding that used to support a patent application in a foreign country. This exemption from Department of State regulations is applicable regardless of whether a license from the Commissioner is required by the provisions of §§ 5.11 and [5.15 (22 CFR 125.04(b), 125.20(b))] >5.12 (22 CFR Part 125)<.

(b) When a patent application containing subject matter on the Munitions List (22 CFR [121.01] >Part 121<) is subject to a secrecy order under § 5.2 and a petition is made under § 5.5 for a modification of the secrecy order to permit filing abroad, a separate request to the Department of State for authority to export classified information is not required (22 CFR [125.05(d)] >Part 125<).

132. Section 5.19 is proposed to be revised to read as follows:

§ 5.19 Export of technical data.

(a) Under regulations (15 CFR 770.10(j)) established by the [U.S.] Department of Commerce, [Bureau of Export Administration, Office of Export Licensing,] a [validated export] license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (37 CFR 5.11 through 5.33) of the Patent and Trademark Office.

(b) [A validated] >An< export license is not required for data contained in a patent application prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and

returned to the United States for subsequent filing in the U.S. Patent and Trademark Office (15 CFR 779A.3(e)).

(c) [Removed].

133. Section 5.20, paragraph (b), is proposed to be removed.

§ 5.20 Export of technical data relating to sensitive nuclear technology.

* * * * *

(b) [Removed].

134. Section 5.25, paragraph (c), is proposed to be removed.

§ 5.25 Petition for retroactive license.

* * * * *

(c) [Removed].

§ 5.31 [Removed and reserved]

135. Section 5.31 is proposed to be removed and reserved.

§ 5.32 [Removed and reserved]

136. Section 5.32 is proposed to be removed and reserved.

§ 5.33 [Removed and reserved]

137. Section 5.33 is proposed to be removed and reserved.

PART 7—[REMOVED AND RESERVED]

138. Part 7 is proposed to be removed and reserved.

Dated: September 10, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–23665 Filed 9–20–96; 8:45 am]

BILLING CODE 3510–16–P

federal register

Monday
September 23, 1996

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within the Territory and Airspace of Iran; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 28690; Special Federal Aviation Regulation (SFAR) No. 76]

RIN 2120–AG28

Prohibition Against Certain Flights Within the Territory and Airspace of Iran

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action prohibits flight operations within the territory and airspace of Iran by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. Increased military presence and activity adjacent to civilian air traffic corridors in Iran have increased the potential threat to civil aircraft overflying the area. Therefore, this action is taken to prevent an undue hazard to persons and U.S.-registered aircraft overflying the area as a result of the ongoing activity in that area.

DATES: This SFAR is effective September 17, 1996, and shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Patricia Lane, Airspace and Air Traffic Law Branch, AGC–230, or Mark W. Bury, International Affairs and Legal Policy Staff, AGC–7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–3515.

SUPPLEMENTARY INFORMATION:

Availability of Document

An electronic copy of this document may be down loaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, Attention: ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the number of this SFAR.

Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 40101(d)(1) of Title 49, United States Code, requires the Administrator of the FAA to consider the regulation of air commerce in a manner that best promotes safety and fulfills the requirements of national security as being in the public interest. Section 44701(a) of Title 49, United States Code, provides the FAA with broad authority to carry out this policy by prescribing regulations governing the practices, methods, and procedures necessary to ensure safety in air commerce.

In mid-September 1996, Iran established an I–HAWK surface-to-air missile launch site near the Iran-Turkey border. This new active SAM site is located approximately seven miles southeast of Uromiyeh Airfield (37°40′N/04°50′4″ E). In the exercise of these statutory responsibilities, the FAA has determined that the presence of the missile launch site in proximity to civilian air traffic corridors has increased the potential threat to civil aircraft and justifies the imposition of certain measures to ensure the safety of U.S.-registered aircraft and operators that are conducting flight operations in the vicinity of the territory and airspace of Iran.

Prohibition Against Certain Flights Within the Territory and Airspace of Iran

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that immediate action by the FAA is required to prevent the injury or loss of certain U.S.-registered aircraft and U.S. operators conducting flights in the vicinity of Iran. I find that the presence of an active I–HAWK surface-to-air missile launch site in close proximity to civilian air traffic corridors has increased the potential threat to civil aircraft overflying the territory and airspace of Iran. Accordingly, I am ordering a prohibition of flight operations within the territory and airspace of Iran by any United States carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is necessary to prevent an undue hazard to U.S.-registered aircraft and to protect persons on board that aircraft. Operations approved by the Administrator, or by another agency of the United States Government with FAA approval and certain emergency operations shall be excepted from the prohibition. Because the circumstances described in this SFAR warrant immediate action by the FAA to maintain the safety of flight, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under 49 U.S.C. 40105(b)(1)(A) to ensure that I exercise my duties consistently with the obligations of the United States under international agreements. The Department of State has been advised of, and has no objection to, the action taken herein.

This rule shall remain effective until further notice.

Regulatory Evaluation

Benefits

This regulation will generate potential benefits in the form of ensuring that the current acceptable level of safety continues for U.S. air carriers and other operators. The potential benefits of this action will accrue only to those air carriers and other operators currently engaging in overflights of the territory of Iran. Since this action is promulgated prior to the occurrence of a serious incident resulting in loss of life or damage to or destruction of property, there are no statistics from which a quantitative estimate of benefits can be derived.

Costs

The SFAR will impose a potential incremental cost of compliance in the form of the circumnavigation (including the additional time for preflight planning) of the territory and airspace of

Iran. Based on information available to informed FAA personnel, there are three U.S. air carriers currently conducting flights within Iranian airspace and over the territory of Iran. In addition, there may be overflights of Iranian territory by other U.S. civil aviation. The FAA believes that these operators will be the only entities affected by this action. These operators will incur costs for additional fuel and time as the result of diverting from their normal flight routes over Iran between Europe, Africa, and Asia. This action will impose costs in the form of additional preflight planning and circumnavigation of Iranian territory. The FAA seeks comment on the economic effects of this rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have ''significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA has determined that none of the U.S. air carriers affected by the SFAR are ''small entities'' as defined by FAA Order 2100.14A. Thus, the SFAR would not impose a ''significant economic impact on a substantial number of small entities.''

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*).

International Trade Impact Assessment

This final rule could have an impact on the international flights of U.S. air carriers and commercial operators because it will restrict their ability to overfly the territory of Iran and, therefore, may impose additional costs relating to the circumnavigation of Iranian territory and airspace. This final rule, however, will not restrict the ability of foreign air carriers to overfly Iranian territory. Given the narrow scope of this rule, it will not eliminate existing or create additional barriers to the sale of foreign aviation products in the United States or to the sale of U.S. aviation products and services in foreign countries.

Federalism Determination

The SFAR set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, FAA has determined that this action is a ''significant regulatory action'' under Executive Order 12866. This action is considered a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The FAA has determined that none of the U.S. air carriers affected by the SFAR are ''small entities'' as defined by FAA Order 2100.14A. Thus, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulation Flexibility Act.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Freight, Iran.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Special Federal Aviation Regulation (SFAR) No. 76 is added to read as follows:

Special Federal Aviation Regulation No. 76—Prohibition Against Certain Flights Within the Territory and Airspace of Iran

1. *Applicability.* This rule applies to the following persons:

(a) All U.S. air carriers and commercial operators;

(b) All persons exercising the privileges of an airman certificate issued by the FAA except such persons operating U.S.-registered aircraft for a foreign air carrier; or

(c) All operators of aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. *Flight Prohibition.* Except as provided in paragraphs 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations over or within the territory and airspace of Iran.

3. *Permitted Operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations over or within the territory and airspace of Iran where such operations are authorized by an exemption issued by the Administrator.

4. *Emergency Situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR part 119, 121, or 135, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons therefore.

5. *Expiration.* This Special Federal Aviation Regulation will remain in effect until further notice.

Issued in Washington, DC, on September 17, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–24317 Filed 9–18–96; 12:54 pm]

BILLING CODE 4910–13–M

federal register

Monday
September 23, 1996

Part IV

Department of Education

34 CFR Part 668, et al.

Postsecondary Education: Student Assistance, General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

RIN 1840–AC37

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Program, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Programs, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Opportunity Grant (FSEOG) programs), the Federal Family Education Loan (FFEL) Programs, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Pell Grant Program, the State Student Incentive Grant (SSIG) Program, and the National Early Intervention Scholarship and Partnership (NEISP) Program. These proposed regulations further the implementation of Department of Education (Department) initiatives to reduce burden and improve program accountability. These proposed regulations clarify and consolidate current policies and requirements, make needed changes in the regulatory requirements for the Secretary to improve the delivery of title IV, HEA program funds to students and institutions, and further protect students and the Federal interest.

DATES: Comments on the proposed regulations must be received on or before November 4, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: John Kolotos, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026–3272. Comments may also be sent to easi__cmgt@ed.gov through the Internet.

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 to those sections be in the same order as the proposed regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act of 1995 section of the preamble. A copy of those comments may also be sent to the Department representative named above.

FOR FURTHER INFORMATION CONTACT:

1. For Project EASI (Easy Access for Students and Institutions): Fred Sellers, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3045, Washington, D.C. 20202. Telephone: (202) 708–4607.

2. For the Student Assistance General Provisions: John Kolotos or Rachael Sternberg, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–7888.

3. For the Federal Perkins Loan Program: Sylvia Ross, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–8242.

4. For the Federal Pell Grant, FWS, and FSEOG programs: Kathy Gause, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–4690.

5. For the FFEL Programs: Patsy Beavan, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–8242.

6. For the Direct Loan Program: Rachel Edelstein, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (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 standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to amend the Student Assistance General Provisions regulations which apply to all of the title IV, HEA programs and the regulations for the Federal Pell Grant, Federal Perkins Loan, FWS, FSEOG, FFEL, and Direct Loan programs. The Secretary is proposing to amend these regulations to further the implementation of several major initiatives within the U.S. Department of Education (Department). These initiatives include: (1) Project EASI; (2) the President's Regulatory Reform Initiative; and (3) improved program accountability to protect students and the Federal interest. In most instances the proposed changes support more than one of these initiatives.

Project EASI

Project EASI is an initiative of the Secretary to pursue a collaborative effort among a diverse group of government, business, and educational leaders to reengineer the postsecondary student aid delivery system to meet the needs of its primary customers, the students and their families. The reengineered delivery system will meet these needs by providing an integrated system to facilitate the ability of students and their families to plan for postsecondary education, choose among postsecondary educational programs and institutions, and finance their choices. This integrated system will be available for all users of the delivery system including not only students and their families but also institutions, State agencies, and others. Project EASI will also reduce delivery system costs to all participants, reduce burden including regulatory burden, reduce fraud and system vulnerability, and enhance management capabilities of the Department and other users of the system including institutions and States.

The following key elements will be part of a reengineered student aid delivery system:

- Each student will have his or her individual student account. The individual student account will contain all the student's data in the system, and all activity in the system concerning the student would be processed through his or her individual student account. Individual student accounts, thus, will be the basis for integrating the delivery system.
- A student will be able to provide current information to, and receive current information from, all system users through his or her individual account.
- The data in the individual student accounts will reflect standardized data definitions for all system users, and data reported using common reporting records.
- The delivery system will not be program-specific; it could be used to deliver funding under any student assistance program.
- To the extent practicable, the delivery system will use advanced technology to automate data processing and will be a paperless system.

• Strict security, such as encryption and controlled access to the data, will be designed as part of the system.

Additional information, including a more detailed description of Project EASI, can be found at http://easi.ed.gov on the Project EASI World Wide Web home page.

Regulatory Reform Initiative

These proposed regulations also include provisions to implement further the President's March 4, 1995 directive to every Federal agency to reduce regulatory and paperwork burden and to eliminate or revise those regulations that are outdated or otherwise in need of reform.

Improved Program Accountability

The Secretary is also proposing provisions in these regulations to improve program accountability. The Secretary believes that the financial aid community can build on recent improvements in program management to assure the best use of Federal funds provided under the title IV, HEA programs.

Major Changes Supporting Departmental Initiatives

In most instances the proposed regulations support more than one of the three Departmental initiatives, *i.e.*, Project EASI, regulatory reform, and improved accountability. The major proposed changes and the initiative or initiatives that each change supports include the following:

• The adoption of a uniform definition of payment period for all the title IV, HEA programs as proposed in § 668.4. (Project EASI, regulatory reform)

• The provision that an institution use electronic services that the Secretary provides on a substantially free basis as a new standard of administrative capability as proposed in § 668.16(o). (Project EASI, improved accountability)

• The restructuring and clarification of the provisions under subpart K, Cash Management, of the Student Assistance General Provisions regulations. (regulatory reform)

• The inclusion of a just-in-time payment method as proposed in § 668.162(c). (Project EASI, improved accountability)

• The elimination of the requirement under § 682.207(b) of the current FFEL Program regulations that an institution maintain a separate bank account for FFEL Program funds as proposed in § 668.163(a). (regulatory reform)

• The requirement that title IV, HEA program funds be disbursed on a payment period basis as proposed in § 668.164(c). (Project EASI, improved accountability)

• The consolidation of the individual title IV, HEA program requirements regarding late disbursements as proposed in § 668.164(h). (Project EASI, regulatory reform)

• The revised student notification requirements as proposed under § 668.165. (Project EASI, regulatory reform, improved accountability)

• The exemption from the current excess cash requirements for an institution that receives funds under the just-in-time payment method as provided in § 668.166(a)(2). (Project EASI, regulatory reform)

• The requirement that an institution disburse FFEL Program funds within a timeframe comparable to that permitted for disbursing funds under the other title IV, HEA programs as proposed in § 668.167(a). (Project EASI, improved accountability)

• The requirement that an institution return FFEL Program funds to a lender if the institution does not disburse those funds within specified timeframes as proposed in § 668.167(b). (Project EASI, improved accountability)

• The procedures under which the Secretary would monitor more carefully an institution's administration of the FFEL Programs as proposed under § 668.167(d) and (e). (improved accountability)

Conforming Changes

The Secretary intends to publish these proposed regulations as final regulations on or before December 1, 1996. At that time the Secretary will also amend the appropriate sections of each of the title IV, HEA program regulations to eliminate any conflicting requirements between the final regulations and current program regulations and to otherwise harmonize the requirements in the final regulations with other title IV, HEA program requirements. As an example of the necessary conforming changes, the Secretary includes in these proposed regulations conforming amendments to the campus-based, FFEL, Direct Loan, and Federal Pell Grant programs that would result from adopting a uniform definition of the term ''payment period'' for all the title IV, HEA programs.

Summary of Proposed Changes

Student Assistance General Provisions

The Student Assistance General Provisions regulations, 34 CFR part 668, implement requirements that are common to the title IV, HEA programs.

Subpart A—General

Section 668.4 Payment Period

For the purpose of simplifying the administration of the title IV, HEA programs, the Secretary is proposing to simplify the definition of the term ''payment period'' and apply that definition to all title IV, HEA programs except the FWS Program. Based upon the simplified common definition, the Secretary is proposing in § 668.164 that all title IV, HEA program funds, other than FWS Program funds, be disbursed to students on a payment period basis. (For the purpose of this discussion, ''disburse'' includes the delivery of loan proceeds to students under the FFEL Programs.) This change, in effect, conforms the regulations to the actual disbursement practices of most institutions.

The Secretary is proposing to base the simplified definition of the term ''payment period'' on the Federal Pell Grant Program definition currently in 34 CFR 690.3 of the Federal Pell Grant Program regulations with modifications.

A. Programs Using Credit Hours With Terms

If a student is enrolled in an eligible program that uses academic terms and measures progress in credit hours, the payment period is the academic term. For example, if a program uses semesters, the semester will be the payment period; if it uses quarters, the quarter will be the payment period.

B. Programs Using Credit Hours Without Terms and Clock-Hour Programs

The Secretary is modifying the Federal Pell Grant Program definition by proposing one definition for students enrolled in (1) eligible programs that measure progress in credit hours but do not use academic terms; and (2) eligible programs that measure progress in clock hours regardless of whether they use academic terms. That definition will be the one currently in effect for programs offered without terms. Under the current Federal Pell Grant Program definition, there is a separate definition for clock-hour programs that are offered in terms, and the Secretary is proposing to eliminate that definition.

Programs that are less than an academic year

For an eligible program using credit hours without terms or clock hours that is less than a full academic year, the first payment period will be the period of time needed to complete the first half of that program as measured in clock or credit hours, and the second payment period will be the period of time needed

to complete the remainder of the program. For example, if a program is 800 clock hours, the first payment period would be the period of time needed for the student to complete 400 clock hours. The second payment period would begin when the student has completed 400 clock hours.

Programs Equal to an Academic Year or a Multiple of an Academic Year

For an eligible program using credit hours without terms or clock hours that is a full academic year or a multiple of a full academic year, for each academic year, the first payment period will be the period of time needed to complete the first half of the academic year as measured in clock or credit hours, and the second payment period will be the period of time needed to complete the remainder of that academic year. Thus, if the eligible program was 900 clock hours, and so was its definition of an academic year for the hours component, the second payment period would begin when the student completed 450 clock hours.

Programs Greater Than an Academic Year and Remainder is One Half or Less of an Academic Year

For an eligible program using credit hours without terms or clock hours that is more than a complete academic year but has a remainder that is less than another complete academic year, if the remaining portion of the program is one-half of an academic year or less, the payment period, after the last complete academic year, will be the remaining portion of the program. For example, if a program is 1,200 clock hours and its definition of an academic year for the hours component was 900 clock hours, the program would consist of three payment periods. The first two payment periods would each be 450 clock hours and would cover the first academic year of 900 clock hours. The third payment period will be the remaining portion of the program, 300 clock hours, and would begin when the student completed clock hour 900.

Programs Greater Than an Academic Year and Remainder is Less Than an Academic Year but Greater Than One Half an Academic Year

If the remaining portion of an eligible program using credit hours without terms or clock hours is less than a complete academic year but more than one-half an academic year, there would be two payment periods for the remaining portion of the program. The first payment period would be the period of time it would take a student to complete half of the clock or credit hours in the remaining portion of the program while the second payment period would be the period of time needed to complete the program. For example, if a program is 1,500 clock hours and its definition of an academic year for the hours component is 900 clock hours, the program would consist of four payment periods. The first two payment periods would each be 450 clock hours and would cover the first academic year of 900 clock hours. The remaining portion of the program would consist of 600 clock hours (1500–900=600), and each payment period in the remaining portion would consist of 300 clock hours (clock hours 901 to 1,200 and 1,201 to 1,500). The second payment period of the second academic year would not begin until the student completed 300 clock hours of the remaining portion of the program. In contrast, under the current Federal Pell Grant Program definition, the first payment period of the second academic year would be 450 clock hours, half the academic year, (clock hours 901 to 1,350), and the second payment period would be the period needed to complete the program, 150 clock hours (clock hours 1,351 to 1,500).

The Secretary is proposing this approach because the Secretary believes that it is important that institutions be allowed to make all Title IV, HEA program disbursements at the same time and because this approach accommodates the current disbursement rules of the FFEL and Direct Loan programs. Currently, under the FFEL and Direct Loan programs the second disbursement for the remaining portion of a program in the example of a 1500 clock-hour program is at clock hour 1,201 while under the Federal Pell Grant Program it is at clock hour 1,351. Under the proposed approach, all second disbursements will be made earlier than under the current Federal Pell Grant Program approach. However, as a consequence, because Federal Pell Grant Program awards are calculated on a payment period basis, this proposal means that the student's Federal Pell Grant award will be reduced for the third payment period of the program and increased for the fourth payment period of the program to reflect that both payment periods in the second academic year of the program will consist of 300 clock hours instead of 450 and 150 clock hours.

The Secretary considered continuing to use the current Federal Pell Grant Program approach for all the title IV, HEA programs. Thus, for the FFEL and Direct Loan programs the second disbursement of the loan would be made at clock hour 1351 instead of at clock hour 1201 even though the two disbursements would be equal unlike the prorated amounts for the Federal Pell Grant Program. The Secretary requests specific comments on whether he should adopt the approach in these proposed regulations or the current Federal Pell Grant Program approach. A more detailed discussion of the disbursement rules is set forth in the discussion of proposed § 668.164.

Subpart B—Standards for Participation in Title IV, HEA Programs

Section 668.16 Standards of Administrative Capability Electronic Services

In order to be considered administratively capable to participate in the title IV, HEA programs, the Secretary proposes that an institution participate in the electronic services that the Secretary provides at no substantial charge to the institution. The Secretary proposes to identify these electronic services in a notice published in the Federal Register. The Secretary would consider an institution that fails to participate in these electronic services not to have the administrative capability to administer the title IV, HEA programs, and, thus, that institution's participation in the title IV, HEA programs may be subject to sanctions such as fines, limitations, and termination.

The use of electronic services by institutions is essential to achieving the Project EASI goal of an integrated student aid delivery system for students and institutions. The Secretary believes that using electronic services is essential to reducing burden on students and institutions, simplifying program administration, and improving program accountability.

The Secretary believes that the savings and benefits that would result from improved business processes made possible by using electronic services would more than offset any necessary initial investments by both the Department and institutions. To achieve these savings and benefits, it is essential that electronic processes replace paper processes at both the Department and institutions, wherever possible. As is currently the case for institutions already using electronic services provided by the Secretary, an institution would be able to use software provided by the Secretary or software developed by the institution, or its vendor, in accordance with specifications provided by the Secretary. The Secretary also believes that most institutions already have the necessary equipment to use these services, and those institutions

that do not have the equipment would be making an investment that would improve institutional services at minimal cost. The Secretary recognizes that using the electronic services provided by the Department would potentially change many aspects of the business process at institutions and welcomes specific comment on any and all aspects of institutions moving into an electronic business process.

Under the proposed rule, the Secretary would determine the electronic services in which an institution must participate for a processing year. If this determination adds or otherwise revises the electronic services in which an institution must participate to be considered administratively capable, the Secretary would notify institutions of that determination in the Federal Register. The Secretary would provide timely notice to institutions in order for them to make adequate preparations to use these services. Under this process the Secretary would continue to provide the software, or provide the specifications for software to be developed by an institution or its vendor, for an institution to use these electronic services.

The Secretary expects to determine the services that an institution would use for the 1997–98 award year based, in part, on the funds available to provide those services to institutions at substantially no cost. Currently, the Secretary is considering, for the 1997–98 award year, requiring institutions to participate in the Title IV Wide Area Network by which student data is transmitted between the Department and institutions, electronic Institutional Student Information Reports (ISIRs), the National Student Loan Data System, and the Student Financial Assistance Bulletin Board System. The Secretary believes that using these basic services provides institutions with the experiences necessary to begin developing an expertise in using the electronic services that the Department provides. This expertise is essential to the implementation of additional electronic services that the Secretary expects to use in administering the title IV, HEA programs, such as the World Wide Web or Internet-based communications. To assist institutions in acquiring this expertise, the Secretary will be offering basic training on using the Department's electronic services. Training sessions are scheduled for October through December 1996, and additional training sessions may be offered if demand warrants offering them.

More detailed, readily available information on the Department's electronic services may be found in the Action Letters on the delivery system that the Department provides all institutions each award year.

Subpart K—Cash Management

Section 668.161 Scope and Purpose

The Secretary proposes to clarify that for purposes of subpart K, the term ''parent'' means a parent borrower under the PLUS programs, and the term ''disburse'' has the same meaning as ''deliver'' loan proceeds under the FFEL Program regulations.

Section 668.162 Requesting Funds

The Secretary proposes to redesignate § 668.163 of the current regulations as § 668.162 and to remove § 668.162 of the current regulations. The Secretary believes that some of the terms defined under § 668.162 of current regulations should be more fully explained in the provisions of the proposed regulations where those terms are used. Accordingly, the Secretary proposes to move to proposed § 668.164 the concepts of ''disburse'' and ''issue checks,'' relocate under proposed § 668.161 the qualifying definition of ''day,'' and eliminate the remaining definitions.

In proposed § 668.162(a) the Secretary emphasizes that the Secretary has the sole discretion to determine the method under which title IV, HEA program funds are provided to an institution.

Under proposed § 668.162(b), the Secretary clarifies that the Secretary does not automatically accept a request for funds from an institution under the advance payment method. For example, the Secretary may reject a request for funds if the amount of the request exceeds the amount of funds the institution is authorized to draw down under a title IV, HEA program.

The Secretary proposes under § 668.162(c) the requirements for a ''just-in-time'' payment method. Under the just-in-time payment method, for each student that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student. As part of those records, the institution would report the date and amount of the disbursements that it will make to that student or that student's parent. The timeframe would establish the earliest date on which the Secretary would accept student records to ensure that the Secretary can provide title IV, HEA program funds to the institution by the date reported by the institution for that disbursement. The just-in-time payment method, thus, provides for reporting information that is no different than current student-level data that an institution is reporting; however, it does require an institution to report that information earlier.

For each record the Secretary accepts for a student or parent, the Secretary would provide by EFT the corresponding disbursement amount to the institution on or before the date reported by the institution for that disbursement. When the institution receives the funds for each record accepted by the Secretary, the institution would disburse those funds based on its determination at the time the institution transmitted that record to the Secretary that the student is eligible for that disbursement. However, if a student is subsequently not eligible for the funds that an institution disburses to the student, the institution must report the adjustment in the funds for which the student is eligible as is currently required.

As an example of a just-in-time payment, an institution determines that it expects to credit a student's account with program funds September 4. For this example, the Secretary establishes a timeframe of 8 days as the time necessary for the Secretary to process a student's record and to provide to the institution the disbursement amount for the student no later than the disbursement date. Therefore, on August 27, the institution determines that the student is eligible and transmits electronically the student's record with the payment information and expected disbursement date. The Secretary processes and accepts the student's record, and, not later than September 4, the Secretary provides by EFT the corresponding disbursement amount for the student.

The Secretary notes that an institution may make a disbursement to a student or parent before submitting a record of that disbursement to the Secretary. If the Secretary accepts that record, the Secretary would provide by EFT the corresponding disbursement amount to the institution shortly after receiving that record from the institution.

The institution would be required to report any adjustment to a previously accepted record within the timeframe established by the Secretary in a notice published in the Federal Register. The Secretary expects to require institutions to report adjustments within 30 days of the date that an institution becomes aware of a change. This timeframe is similar to the 30-day timeframes

currently required under the Federal Pell Grant and Direct Loan programs.

The Secretary believes that the just-in-time payment method is essential to realizing the benefits of the Project EASI goal of an integrated delivery system. The just-in-time payment method would provide the payment information on or very near the actual time of disbursement. The payment information forms the core of the individual student account that is the basis for the Project EASI integrated delivery system. Using the just-in-time payment method, would enable the delivery system to provide the necessary current information to students and other participants while reducing burden related to the reconciliation of payment data. In addition, because the Secretary would be providing funds based on current student-level data, the Secretary's ability to monitor the integrity of the programs would be substantially enhanced. The Secretary expects the advantages of the just-in-time payment method for students, institutions, and the Department to increase as further reengineering of the delivery system is accomplished, additional technological improvements are implemented, and skills in using these improvements increase.

The Secretary expects to provide Direct Loan Program funds to institutions that participate in the Direct Loan Program under School Origination Option 1 and Standard Origination using a just-in-time payment method beginning in the 1997–98 award year. The Secretary is also considering providing Federal Pell Grant Program funds using a just-in-time payment method in the 1998–99 award year. The Secretary specifically requests comments on this plan.

Section 668.163 Maintaining and Accounting for Funds

The Secretary proposes to redesignate § 668.164 of the current regulations as § 668.163.

The Secretary proposes under § 668.163(c)(3)(iii) that an institution not have to maintain in an interest-bearing or investment account title IV, HEA program funds that the institution receives from the Secretary under a just-in-time payment method. The Secretary believes that, because a just-in-time payment method would ensure the expeditious accounting and disbursement of program funds, little or no interest would be earned on funds provided to the institution under that payment method; therefore, there would be no harm to the Federal fiscal interest as a result. However, the Secretary wishes to make clear that, regardless of whether an institution receives funds under the just-in-time payment method, an institution that chooses to maintain Federal Pell Grant, Direct Loan, FSEOG and FWS program funds in interest-bearing or investment accounts must remit to the Secretary any earnings on those funds that exceed $250.

Also, the Secretary proposes to eliminate the provision now in § 668.164(c)(1)(ii) under which an institution that drew down $3 million or more in title IV, HEA program funds in the prior year does not have to continue to maintain those funds in an interest-bearing or investment account if the institution earned $250 or less on those program funds in that year. The Secretary believes that an institution must demonstrate that it will not earn $250 in the current year in order to qualify for the remaining exemption to the interest-bearing account requirement under this section. However, an institution can qualify for this exemption by indicating that it did not earn $250 in interest in the prior award year and by demonstrating that it will disburse the funds it receives in the current award year in the same manner as it disbursed funds in the prior award year.

Finally, the Secretary proposes to eliminate the requirement currently under § 668.164(a) and 34 CFR 682.207(b) that an institution must maintain a separate bank account for FFEL Program funds the institution receives from a lender by electronic funds transfer. The Secretary believes this requirement is no longer needed, provided that an institution maintains and accounts for those funds in the same manner required for other funds the institution receives under the title IV, HEA programs. Accordingly, the Secretary proposes to restructure the requirements under this section to make clear that for FFEL Program funds, an institution would be required to comply with the bank account notification requirements under § 668.163(a), and the accounting and financial record requirements under § 668.163(d). However, the Secretary may require a separate account for FFEL Program funds and for any other title IV, HEA program funds as provided under § 668.163(b).

Aside from these proposed provisions, the proposed revisions to § 668.163 are merely intended to clarify current rules.

Section 668.164 Disbursing Funds

The Secretary proposes to redesignate § 668.165 of the current regulations as § 668.164.

The Secretary proposes to amend this section by restructuring and clarifying the current provisions, moving into this section the definition of the term ''disburse'' (currently in § 668.162) and expanding the scope of that definition, adding a requirement that an institution disburse all program funds on a payment-period basis, and consolidating in this section the late disbursement requirements that are currently in the individual program regulations.

Under proposed § 668.164(a), the Secretary provides that an institution makes a disbursement of title IV, HEA program funds on the date the institution credits a student's account at the institution, or pays the student or parent directly, with (1) Funds received from the Secretary or a lender or (2) institutional funds used in advance of receiving title IV, HEA program funds.

The Secretary did not previously include in these rules the provision that an institution may use its own funds to make program disbursements but now proposes to include this provision to clarify that a disbursement occurs when an institution makes the benefits of title IV, HEA funds constructively available to students. Accordingly, the Secretary does not consider that a disbursement is made if, solely for the purpose of preparing a bill for a student, an institution must credit the student's account at the institution by making a general ledger entry.

The Secretary is proposing that all title IV, HEA program funds be disbursed by payment period. As a practical matter, this process should differ little from the practice of most institutions. However, there will be some minor changes. Under the current regulations, institutions that use quarters as academic terms can disburse FFEL or Direct Loan Program loans to students in two disbursements: half the loan at the beginning of the first quarter, and the other half at the beginning of the second quarter. Under the proposed change, such institutions will have to make three equal disbursements, one for each quarter. Thus, the disbursement schedule for the loan programs will match the schedule for the Federal Pell Grant and campus-based programs.

Under the existing disbursement rules applicable to the FFEL, Direct Loan, and campus-based programs, an institution that measures progress in clock hours or credit hours without terms has to make at least two disbursements during an award year or loan period, with the second disbursement coming after the student completes half the award year or loan period. However, institutions could determine that a student reached half an award year or loan period when

half the number of days in that year or period have elapsed even though the student did not actually complete half the clock hours or credit hours in the award year or loan period at that time. The proposed change will require a student to actually complete the number of clock or credit hours in that payment period before a second disbursement can be made. This change makes the disbursement rules more consistent with the purpose of multiple disbursements.

The following example illustrates this change. A student enrolls in a 900 clock-hour program that is scheduled to begin on September 1, 1996 and end on April 30, 1997. The student receives grants under the Federal Pell Grant and FSEOG programs and a loan under the Direct Subsidized Loan Program. The student may receive a second disbursement under each program only when the student actually completes 450 clock hours; the student may not receive a second disbursement on January 1, 1997, the calendar midpoint, unless he or she has completed 450 clock hours by that date.

In connection with determining whether a student completes the number of clock hours in a payment period, the Secretary notes that an institution using clock hours may use ''excused absences'' only under limited circumstances. For this purpose, ''an excused absence'' is one that a student does not have to make up. In order to count excused absences when determining whether a student has completed a payment period, an institution using clock hours must have a formal written policy allowing excused absences. Moreover, the maximum number of hours of excused absences that it may use for that purpose is 10 percent of the clock hours in that payment period, or a lower number if required by its State licensing or accrediting agency. Except where an accrediting agency or State licensing agency sets a more rigorous standard, the Secretary believes that excused absences of more than 10 percent of the clock hours in a payment period would impair the educational attainment of a student and, thus, would not make the best use of Federal funds. For example, if a payment period is 450 clock hours, unless the institution's State licensing or accrediting agency requires a lower number, 45 is the maximum number of hours of excused absences that may be included in determining whether the student completed that payment period.

The Secretary is proposing to amend the loan disbursement rules to take into account the statutory requirement that institutions must make at least two disbursements for a loan period even if the loan period is only one payment period. Accordingly, the Secretary is proposing to amend 34 CFR 685.301(b) of the Direct Loan Program regulations and 34 CFR 682.603 and 604 of the FFEL Program regulations to provide different disbursement rules for loan periods that are one payment period or less and loan periods that are more than one payment period. For the former type loan period, an institution will be required to make two disbursements during the loan period. For loan periods that are more than one payment period, the institution must disburse loan proceeds at least once each payment period and each disbursement must be substantially equal.

Finally, the Secretary notes that an institution can make a second or subsequent disbursement of loan proceeds to a student if the institution makes the first loan disbursement to that student on or after the point in time when it is allowed to make the subsequent disbursement. For example, a student attends an institution that uses quarters and applies for a loan during the winter term. The student's loan period includes the preceding fall quarter as well as the winter and spring quarters. In such a case, the institution can make one disbursement in the winter that includes loan proceeds for both the fall and winter terms. It then can make the final disbursement at the beginning of the spring quarter.

Under proposed § 668.164 paragraphs (c), (d), and (e), the Secretary clarifies the current requirements under which an institution disburses title IV, HEA program funds to a student or parent directly, the charges for which an institution may credit a student's account at the institution, and the provisions regarding credit balances.

Section 668.164(e) clarifies that the earliest an institution may disburse title IV, HEA program funds is the later of 10 days before the first day of classes of the payment period or the date the student completed the previous payment period for which he or she received title IV, HEA program funds. However, a second or subsequent disbursement of FFEL or Direct Loan funds may not be made until the later of the date the student completed the previous payment period or the calendar midpoint of the loan period.

The Secretary proposes to consolidate under § 668.164(g) the requirements regarding late disbursements that are currently in the individual program regulations (see 34 CFR 674.16(g), 676.16(e), 682.604(e), 685.303(d), and 690.75(b)). The current regulations allow an institution to make a disbursement to a student after the student becomes ineligible because he or she ceases to be enrolled at the institution or, for purposes of the Direct Loan and FFEL programs, ceases to be enrolled at least half-time. In addition, the regulations require that an institution obtain, or the student submit, documentation establishing the student's eligibility before the student became ineligible. If an institution obtains the required documentation, the institution may make a late disbursement.

Under all the title IV, HEA programs, a late disbursement may be made only if those program funds are used to pay for documented educational costs that were incurred before the student became ineligible. This qualification does not mean that the institution must obtain specific and detailed expenditure documentation from the student. The institution may develop a policy that it applies to such cases; for example, all expenses for books and supplies may be considered to have been incurred by a student who withdraws after the first two weeks of a term. That policy may also provide that a student incurs costs related to meals and housing and transportation prorated to the point in time when he or she leaves school.

The proposed late disbursement rules simplify and make uniform the regulations by eliminating redundant provisions in the program regulations but otherwise differ from the current regulations in only one substantive way. The Secretary proposes that if an institution chooses to make a late disbursement, it must make that disbursement no later than 90 days after the student becomes ineligible. The Secretary believes that 90 days is a reasonable amount of time for an institution to correct any problems that delayed that disbursement from being made while the student was eligible.

Section 668.165 Notices and Authorizations

As part of the restructuring of this subpart, the Secretary proposes to incorporate in this section the student notification requirements currently under § 668.165(a)(1) and the student authorization requirements and related provisions currently under § 668.165 paragraphs (a)(2), (b)(3)(iv), (b)(4), (d), and (e).

Under proposed § 668.165(a)(1), the Secretary would revise in two ways the existing requirement that an institution notify a student or, in the case of a PLUS loan, the student's parent, of the amount of funds that the student or parent can expect to receive and how and when those funds will be paid.

First, an institution must provide the notice only to the student but must include in that notice any PLUS funds that the student's parent will receive. Second, the notice must indicate for any loans under the Direct Loan or FFEL Programs whether those loans are subsidized or unsubsidized.

The Secretary proposes under § 668.165(a)(2) to revise the requirement that an institution notify expeditiously a student or parent borrower that the institution has credited the student's account with Direct Loan, FFEL, or Federal Perkins Loan program funds. Under the proposed revision, as part of that notice an institution would also notify the student or parent of the right to cancel that loan or loan disbursement and the date by which that cancellation request must be made. The Secretary would allow an institution to provide that notice in writing or electronically. The Secretary proposes that an institution would be required to provide the notice (1) No earlier than 10 days before and no later than 10 days after the institution credits the student's account at the institution with Direct Loan or Federal Perkins Loan Program funds, or with FFEL Program funds the institution receives from a lender via EFT or master check, or (2) no earlier than 10 days before and no later than 10 days after the institution disburses those funds by initiating an electronic funds transfer to the student's or parent's bank account if the institution subsequently withdraws funds from that bank account to pay for tuition and fees and other authorized charges. If, within 14 days after the date the institution sends that notice, the institution receives a request from the student or parent to cancel the loan or loan disbursement, the institution would have to comply with that request and return any loan funds in accordance with applicable program requirements. If the institution receives a cancellation request after this 14-day period, the institution may honor that request. In addition, the institution would need to inform the student or parent of the outcome of the request.

The Secretary wishes to make clear that an institution would not have to provide the proposed notice affording a student or, in the case of a PLUS loan, the student's parent, the opportunity to refuse the loan if the institution disburses that loan directly to the student or parent by issuing a check or releasing a check provided by a lender under the FFEL Programs. For loan funds disbursed in this manner, students or parents already have the opportunity to refuse the funds at the time those loan funds are being disbursed simply by not endorsing the check or returning the check to the institution or to the lender. However, for loan funds provided to an institution by the Secretary, or by a lender via EFT or master check, a student or parent does not have a similar opportunity to refuse the loans funds if the institution chooses to disburse those loan funds by crediting the student's account.

In making this proposal, the Secretary believes that a student or parent should have the opportunity to refuse loan funds at the time those funds are being disbursed, regardless of the manner in which loan funds are provided to an institution, and regardless of the way the institution chooses to disburse those funds. A student or parent does not have this opportunity to refuse loan funds under an arrangement where the institution disburses loan funds by initiating an EFT to the student's or parent's bank account and subsequently withdraws funds from that account to pay for tuition and fees or other authorized charges. The disbursement of loan funds under this arrangement is analogous to the disbursement of loan funds made by crediting the student's account at the institution. Therefore, an institution would be required to provide the proposed notice to a student or parent if the institution disburses any title IV, HEA program loan funds under this type of arrangement.

Moreover, the Secretary notes that a student or parent does not give up his or her right to refuse a loan disbursement at the time that loan disbursement is made simply because the student or parent authorized a lender to provide loan funds to an institution via EFT or authorized the institution to disburse via EFT those loan funds to the student's or parent's bank account. These authorizations merely enable the lender or the institution to provide loan funds via an EFT method.

The Secretary proposes to consolidate under § 668.165(b) the student and parent authorizations now in § 668.165(d). Under the current rules, if an institution obtains the appropriate authorization, the institution may use a student's or parent's title IV, HEA program funds to pay for educational costs incurred by the student (*i.e.*, costs other than tuition and fees and room and board), hold title IV, HEA program funds in excess of educational costs, and transfer those funds electronically to the student's or parent's bank account. The Secretary does not propose to change any of these activities. Rather, the Secretary proposes to simplify the process of obtaining an authorization, and to codify current policy regarding the use of title IV, HEA program funds under these authorizations.

First, the Secretary proposes to eliminate the requirement currently in § 668.165(d)(3) under which an institution must notify annually a student or parent of the provisions contained in an authorization previously provided to the institution. Under proposed § 668.165(b)(3), a student or parent may authorize the institution to perform any of the described activities for the entire period during which the student is enrolled at the institution. The Secretary believes that annual notifications are not necessary since a student or parent may modify or cancel a previously granted authorization at any time.

Second, with regard to modifying an authorization, the Secretary clarifies that the modification takes effect on the date the institution receives a request from a student or parent changing the current authorization.

Third, with regard to canceling an authorization allowing the institution to use a student's or parent's title IV, HEA program funds to pay for incurred educational costs, the Secretary clarifies that the cancellation is not retroactive; the institution may use title IV, HEA program funds to pay for previously authorized charges that were incurred by the student before the institution received a request from the student or parent canceling that authorization.

Finally, with regard to an authorization allowing the institution to hold title IV, HEA program funds, the Secretary clarifies that an institution must pay any remaining balance of those funds to a student by the end of the loan period for which those funds were intended or by the end of the last payment period in the award year for which those funds were awarded.

Section 668.166 Excess Cash

In § 668.166(a)(2), the Secretary proposes to exempt from the requirements under this section institutions that receive title IV, HEA program funds from the Secretary under the just-in-time payment method. The Secretary wishes to make clear that this exemption would apply only to the title IV, HEA program funds that an institution receives under the just-in-time payment method. As discussed previously under proposed § 668.162, an institution that participates under this funding method would provide to the Secretary student-level payment information on or very near the actual date of disbursement, substantially increasing the Secretary's ability to monitor the institution's use of title IV, HEA program funds. Moreover, unlike

the manner in which some institutions determine their immediate cash needs under the advance payment method, an institution under the just-in-time payment method would be required to make an eligibility determination for each student before receiving title IV, HEA program funds for that student. Accordingly, the Secretary is more assured that the institution will not have excess cash. To the extent that such an institution has excess cash, the Secretary believes that it would be a nominal amount caused by minor award adjustments. For these reasons and the provision that the Secretary would provide new funds only after deducting any adjustments reported by the institution, the Secretary believes that excess cash would not be a problem for institutions participating under the just-in-time payment method.

Section 668.167 FFEL Program Funds

The Secretary proposes to relocate under proposed § 668.167 the loan certification provision now in § 668.163(b), amend that provision, and propose new requirements regarding FFEL Program funds for institutions that are placed on the reimbursement payment method.

Under § 668.167(a), the Secretary proposes to modify the current requirement that an institution may not request loan funds that a lender will provide by EFT or master check earlier than 13 days before the first day of a student's loan period by referencing the student's payment period instead of the loan period. The Secretary proposes this modification to correct the omission in the current rules that the 13-day requirement should apply not only to the first loan disbursement, but to all subsequent loan disbursements. Thus, in certifying a loan application, an institution could not request a lender to provide loan funds earlier than 13 days before each payment period. In addition, the Secretary clarifies that for first-time, first-year borrowers, an institution could not request loan funds earlier than 27 days after the first day of classes of the borrower's first payment period.

In § 668.167(b), the Secretary proposes new timeframes under which an institution would return FFEL Program funds to a lender. Currently, an institution has 45 days from the date it receives FFEL Program funds not only to disburse those funds to eligible students, but also to pay those students any loan proceeds that remain in their accounts after those proceeds are disbursed (see 34 CFR 682.604(c)). This rule was established at a time when lenders provided most FFEL Program funds by a check payable to the borrower or copayable to the borrower and the institution and the Secretary believed that 45 days was a reasonable amount of time for an institution to obtain a borrower's endorsement on the loan check and to otherwise process that loan check.

Under the proposed timeframes, an institution would return to a lender any loan funds that the institution does not disburse to eligible students within 3 business days after the institution receives the funds, if those funds are provided by the lender via EFT or master check. If a lender provides loan funds by a check payable to the borrower or copayable to the borrower and the institution, and the institution does not disburse the funds within 30 days after the date it receives the funds, the institution would need to return these funds to the lender immediately.

The Secretary proposes these timeframes for several reasons. First, the Secretary believes there is no reason why an institution that receives loan funds from a lender via EFT or master check should hold those funds for up to 45 days and derive any benefits from holding the funds when the costs of the funds are either subsidized by taxpayers or paid by student and parent borrowers. Moreover, since EFT and master check loan funds are immediately negotiable by the institution (unlike checks, which require the endorsement of the borrower), the Secretary believes that these loan funds can and should be disbursed within 3 business days, just like any other title IV, HEA program funds. For loan funds an institution continues to receive from a lender by check, the Secretary notes that, in total, the proposed 30-day requirement to disburse those funds, together with the 14-day requirement to pay any credit balance of those funds, provides essentially the same time (44 days) as the current 45-day rule. The Secretary believes that 30 days is more than enough time for an institution to provide a student the loan proceeds, particularly when the borrower is in need of those funds to pay his or her educational costs.

Second, the Secretary wishes to eliminate the separate timeframes within which an institution must disburse FFEL Program funds and pay the student any remaining balance (credit balance) of those funds. As noted earlier, under the FFEL Program regulations an institution has 45 days to disburse and otherwise pay a student his or her loan funds. However, the cash management regulations require that once a loan disbursement is made, the institution must pay any credit balance of those funds to the student within 14 days. Thus, an institution needs to monitor its FFEL Program disbursements and payments of credit balances to ensure that it makes those disbursements and payments within the earlier of these two different time frames. Under the proposed rule, an institution would follow the same disbursement and credit balance time frames for FFEL Program funds that it does for all other title IV, HEA program funds.

In making this proposal the Secretary realizes that there may be instances where an institution is unable to make a second or subsequent disbursement of FFEL Program funds within these timeframes because the student is very close to completing, but has not yet completed, the required number of clock or credit hours in a preceding payment period. For this reason, the Secretary proposes that an institution may delay returning loan funds to the lender if the institution determines that the student can complete the required hours within 10 days after the date that the institution would normally be required to return those funds. An institution may also delay returning funds to a lender for 30 days after the date the institution would normally be required to return those funds if the institution is placed on the reimbursement payment method under proposed § 668.167 (d) or (e).

The Secretary proposes under § 668.167(d) rules and procedures regarding the disbursement of FFEL Program funds and the certification of FFEL Program loan applications that are comparable to the rules and procedures currently in effect for institutions that are placed under the reimbursement payment method for the other title IV, HEA programs.

In proposed § 668.167(d), an institution that is placed on the reimbursement payment method may not disburse any FFEL Program funds to a borrower until the Secretary approves a request from the institution to make that disbursement to that borrower. The Secretary may also prohibit the institution from certifying a borrower's loan application until the Secretary approves a request from the institution to make that certification for that borrower.

In order for the Secretary to approve a disbursement or certification request for a borrower, the institution would be required to submit documentation to the Secretary, or an entity approved by the Secretary, that shows that the borrower is eligible to receive that disbursement or certification. The entity approved by

the Secretary may be a certified public accountant or financial aid consultant that an institution uses to review its disbursement or certification requests before those requests are forwarded to the Secretary. In addition, pending the Secretary's approval of a disbursement or certification request, the Secretary may take one or more of the following actions: (1) Prohibit the institution from endorsing a master check or obtaining a borrower's endorsement of any loan check, (2) require the institution to maintain loan funds that it receives from a lender via EFT in a separate bank account that contains no other funds, and (3) prohibit the institution from certifying a borrower's loan application.

The Secretary proposes that these rules and procedures apply to an institution that participates in the FFEL Programs for the same reasons that the Secretary places an institution on the reimbursement payment method for the other title IV, HEA programs—to protect students and the Federal interest in those instances where the Secretary determines there is a need to strictly monitor an institution's participation in those programs. Accordingly, where the Secretary determines there is a need to strictly monitor an institution's participation, but that institution participates only in the FFEL Programs, precluding the Secretary from placing the institution under the reimbursement payment method, the Secretary proposes under § 668.167(e) to apply the rules and procedures of paragraph (d) of this section to that institution.

The Secretary believes that the proposed approach is the least complicated and burdensome for all of the parties involved in administering the FFEL Programs. However, since this proposed approach is the first time that the Secretary would impose limitations on the disbursement of FFEL Program funds, or on the certification of FFEL Program loan applications, the Secretary invites comments on alternate approaches.

Campus-Based Programs, Federal Family Education Loan Programs, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program

Sections 674.2, 675.2, 676.2, 682.200, 685.102, and 690.2 Definitions

The Secretary proposes to amend §§ 674.2(a), 676.2(a), 682.200(a)(1), 685.102(a)(1), and 690.2(a) of the Federal Perkins Loan, FSEOG, FFEL, Direct Loan, and Federal Pell Grant program regulations, respectively, to add a cross-reference to the ''payment period'' definition in § 668.4 discussed below. In the definitions of terms defined in subpart A of 34 CFR part 668, the Secretary proposes to include the uniform definition of a payment period in § 668.4 of these proposed regulations. The Secretary, therefore, proposes to delete the duplicative definition of a payment period in §§ 674.2(b), 676.2(b), and 690.3. The Secretary also proposes to delete the definition of a payment period in § 675.2(b) as it is not used in part 675.

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

Sections 682.207, 682.604, and 685.301 Disbursements

The Secretary is proposing to amend the disbursement rules of the FFEL and Direct Loan programs. The proposed change takes into account that section 428G of the HEA requires an institution to make at least two disbursements in a loan period even if the loan period consists of only one term, *e.g.*, one semester. Accordingly, the Secretary is proposing to amend 34 CFR part 682.207(c), 682.603(a), and 682.604(c) of the FFEL Program regulations and 34 CFR part 685.301(b) of the Direct Loan Program regulations to provide different disbursement rules for loan periods that consist of one payment period and loan periods that include more than one payment period. For the former type loan period, an institution or lender is required to make two disbursements during the loan period. For loan periods that include more than one payment period, the institution or lender must disburse loan proceeds at least once in each payment period. Under each approach, each disbursement in a loan period must be substantially equal.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these regulations without impeding the effective and efficient administration of the programs.

Summary of Potential Costs and Benefits

Potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following heading: *Initial Regulatory Flexibility Analysis*, and in the information stated previously under Supplementary Information.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed 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 (groupings 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, § 668.4 *Payment period*.) (4) Is the description of the regulations in the ''Supplementary Information'' section of the preamble helpful in understanding the regulations? How could this description be more helpful in making the 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 Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W., (Room

5121, FB–10), Washington, D.C. 20202–2241.

3. Initial Regulatory Flexibility Analysis

The Secretary has determined that some small entities are likely to experience economic impacts from these proposed regulations, specifically with respect to the proposal to require institutions that participate in the FFEL Program and that are on the reimbursement payment method for the Federal Pell Grant, Federal Perkins Loan, FSEOG, or Direct Loan program, or for which the Secretary determines there is a need to strictly monitor FFEL funds, to submit documentation from existing sources to the Secretary or approved entity, that supports the certification of FFEL applications or supports intended disbursements of FFEL program funds to eligible borrowers. A more detailed explanation of these proposed changes in § 668.167 can be found elsewhere in this preamble under the heading *Summary of Proposed Changes*. In accordance with the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the economic impact on small entities has been performed. A summary of the IRFA appears below.

Description of the Objectives of, and Legal Basis for, the Proposed Rule

The Secretary proposes that these rules and procedures apply to an institution that participates in the FFEL Programs for the same reasons that the Secretary places an institution on the reimbursement payment method for the other title IV, HEA programs: to protect students and the Federal interest in the title IV, HEA programs in those instances where the Secretary determines there is a need to strictly monitor an institution's participation in those programs. These rules would also apply to those institutions that participate in only the FFEL Programs. The Secretary has a responsibility in managing the title IV, HEA programs to ensure that only eligible students, and parents in the case of PLUS funds, receive title IV, HEA program funds, and that they receive those funds in the amounts they are eligible for.

Definition and Identification of Small Entities

The Secretary has adopted the U.S. Small Business Administration (SBA) Size Standards for this analysis. The RFA directs that small entities are the sole focus of the Regulatory Flexibility Analysis. There are three types of small entities that are analyzed here. They are: for-profit entities with total revenue below $5,000,000; nonprofit entities with total revenue below $5,000,000; and entities controlled by governmental entities with populations below 50,000. The total number of institutions (large and small) participating in the title IV, HEA programs during the 1995–96 award year was 6,576. As of July 31, 1996 there were 307 institutions on the reimbursement payment method: estimated at 257 for-profit entities, 36 nonprofit entities, and 14 governmental entities. Of the 307 institutions, 175 participate in the FFEL Programs and had loan activity during the 1995 fiscal year. The data regarding the number of institutions on the reimbursement payment method, the number of those institutions that participate in the FFEL Programs and the volume of loan funds was obtained through Department of Education databases, such as the National Student Loan Data System. Where exact data were not available to estimate the cost to small entities, data elements were chosen that would have overestimated rather than underestimated the cost. For example, information is not available on the proportion of these institutions that are small versus the number that are large. For this analysis, in order to prevent an underestimate, all 175 institutions were assumed to be small although 8 had a loan volume greater than $5,000,000 under the FFEL Programs. The Secretary particularly invites comments on the definition of small entity and the estimate of the number of small entities that would be covered by the proposed rule.

The component of the proposed rule that could potentially cause a small entity to be adversely affected is the proposal to require institutions that participate in the FFEL Programs and that are on the reimbursement payment method for other title IV, HEA programs, or for which the Secretary determines there is a need to strictly monitor FFEL Program funds, to submit documentation from existing sources to the Secretary or an approved entity, that supports the certification of FFEL Program applications or supports intended disbursements of FFEL Program funds. The FFEL Program disbursements at an institution could be delayed for an estimated average of 18–20 days until approval for those certifications or disbursements was received by the institution, costing the institution interest expenses and paperwork expenses for the submission of supporting documentation.

Compliance Costs of Proposed Rule

Some small (and large) entities will experience economic impacts from this proposed rule. These entities are those that would have to borrow funds in order to operate during the 18–20 days prior to receiving approval from the Secretary to certify loan applications, or to disburse FFEL Program funds. The economic impact on these entities are those costs associated with obtaining a short-term loan and those costs associated with unearned interest revenue (on institutional funds used in lieu of FFEL Program funds) that could have been earned through an interest-bearing or investment account during the 18–20 day delay. An estimate of the calculable costs of obtaining a short-term loan, and of the loss of interest revenue during the delay, was calculated for small entities.

More than 60 percent of the 175 institutions that could be affected by these proposed regulations had an FFEL Program loan volume of less than $900,000 during the 1995 fiscal year. Therefore, for most institutions, based upon an interest rate equal to the prime rate plus 4 percent (8.25%+4%=12.25%) for two short-term loans, one for each disbursement for a period of 30 days, the cost per institution would be an estimated $9,062 in interest expenses. The potential loss of interest earnings that could have accrued for the delayed FFEL Program funds during that time is estimated at 3 percent equaling an estimated $2,219. Less than 15 percent of the 175 institutions identified had a loan volume of $3,300,000 or greater. For an institution in this category, the interest expenses for the total amount of loan commitments under the same conditions above, would equal an estimated $33,226. The potential loss of interest earnings on those funds equals an estimated $8,137 per institution.

In addition to the interest expenses, there would be an estimated cost of $230 per institution for increased paperwork burden as a result of submitting to the Secretary or approved entity documentation in support of the certification of loan applications or the disbursement of FFEL Program funds to eligible borrowers. The cost is a result of an estimated increase of 10 hours of paperwork burden performed by an employee at $20 per hour, and $3.00 in postage for an average of 10 mailings.

The total potential cost in interest expenses and increased paperwork burden for most small entities with low FFEL Program loan volume is estimated at $11,511. For the approximately 15 percent of small entities with a high FFEL Program loan volume, as noted above, the total potential cost per institution is estimated at $41,593. These costs are estimates and the costs experienced by actual institutions will

undoubtedly be different. These estimates are provided to satisfy the RFA requirement that costs of compliance be described and should be used as illustrative examples only. The Secretary particularly invites comments on these estimates of each of these alternatives for small entities.

Discussion of Economic Impacts

This analysis has determined that an estimated 138 small for-profit entities, an estimated 28 small nonprofit entities, and an estimated 9 small governmental entities will experience adverse economic impacts from these proposed regulations. The adverse economic impacts experienced by some small (and large) entities is balanced by the positive economic impacts accruing to the U.S. taxpayer. These positive impacts arise (1) From the ability of the Secretary to ensure that eligible students receive title IV, HEA program funds in the amounts for which they are eligible in cases where there is a need to strictly monitor title IV, HEA program funds at an institution and (2) from the protection of students and the Federal interest in the title IV, HEA programs.

The use of the proposed requirement will enable the Secretary to better discharge the responsibilities of managing the title IV, HEA program funds, to promote parallel requirements across the title IV, HEA programs, and to better safeguard the Federal fiscal interest and the interests of students.

Identification of Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

The Secretary has not found any other Federal rules which duplicate, overlap, or conflict with the proposed rule. The Secretary particularly invites comments on other Federal rules that meet these criteria.

Significant Alternatives That Would Satisfy the Same Legal and Policy Objectives While Minimizing the Economic Impact on Small Entities

The Secretary has identified no other significant alternatives that would satisfy the same legal and policy objectives while minimizing the economic impact on small entities. The Secretary believes that the proposed approach is the least complicated and burdensome for small (and large) entities involved in the administration of the title IV, HEA programs while still allowing for the proper protection of the Federal fiscal interests and the interests of students and their parents. The Secretary particularly invites comments on this determination.

Conclusion

The Secretary concludes that a substantial number of small entities are likely to experience significant economic impacts from the proposed rule. However, as discussed in the section referring to the cost-benefit assessment of this proposed rule pursuant to Executive Order 12866, the Secretary has concluded that the costs are outweighed by the benefits. In this case, the benefits are better protection of the Federal fiscal interest as well as improved service to students participating in the title IV, HEA programs.

The Secretary invites comments on any aspect of this analysis, particularly comments on the definition of small entity, the estimated number of institutions that are expected to experience economic impacts, the estimated costs, and any significant alternatives that would satisfy the same legal and policy objectives while minimizing the economic impact on small entities.

Paperwork Reduction Act of 1995

Proposed §§ 668.16, 668.162, 668.165, and 668.167 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these regulations to the Office of Management and Budget (OMB) for its review.

Collection of information: Student Assistance General Provisions—Section 668.16—Standards of Administrative Capability—The Department currently has this section approved under OMB control number 1840–0537. To be considered administratively capable to participate in the title IV, HEA programs, the Secretary proposes that an institution participate in the electronic services that the Secretary provides at no substantial charge to the institution. This requirement does not change the information that an institution reports or receives but does change the way that the institution reports or receives the information.

Section 668.162—Requesting funds—The Secretary proposes under § 668.162(c) the requirements for a ''just-in-time'' payment method. Under the just-in-time payment method, for each student that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student. The just-in-time payment method provides for reporting information that is no different than current student-level data that an institution is reporting; however, it does require an institution to report that information earlier.

Section 668.165—Notices and authorizations—Institutions are required to provide a notice once each award year of the amount of title IV, HEA program funds a student can expect to receive, how and when those funds will be paid, and whether any title IV, HEA program loans are subsidized or unsubsidized. Annual recordkeeping and reporting burden contained in this collection of information as proposed in these regulations are estimated to average 78.9 hours annually per respondent. There are 6,576 respondents and the burden hours total 518,846.4 hours including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Institutions are also required to provide a notice to a student or parent in the case of PLUS funds, of (1) Disbursements of title IV, HEA loan funds credited to the student's account at the institution or the student's or parent's bank account, and (2) the student- or parent-borrower's right to cancel a loan or loan disbursement, and when that cancellation request must be made. Annual recordkeeping and reporting burden contained in this collection of information as proposed in these regulations are estimated to average 116.7 hours annually per respondent. There are a 5,944 respondents and the burden hours total 693,644.8 hours 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 recordkeeping and reporting burden hours for § 668.165 equals 1,212,491 hours. The Secretary understands that respondents are already providing this notice and the actual increase in burden would be much less than this estimate.

Section 668.167—FFEL Program funds—Institutions that participate in the FFEL program that are on the reimbursement payment method for other title IV, HEA programs or for which the Secretary determines there is a need to strictly monitor FFEL program funds must submit documentation to the Secretary or an approved entity in support of disbursements of FFEL program funds to eligible students and parents. The information to be collected includes: specific information from the institution's files regarding eligibility and documentary evidence. The

Secretary needs and uses the information to approve disbursements of FFEL program funds.

All information is to be collected on a case-by-case basis. Annual recordkeeping and reporting burden contained in the collection of information proposed in these regulations are estimated to average 1 hour for an average of 10 submissions for 175 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 recordkeeping and reporting burden hours equals 1750 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 these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have a practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections 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 3053, ROB–3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Eastern standard time 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, Loan programs—education, Grant programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Parts 674, 675, and 676

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan Programs—education, Student aid, Vocational education, Reporting and recordkeeping requirements.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Loan Programs—education, Student aid, Vocational education, Reporting and recordkeeping requirements.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: September 12, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program)

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, and 1141, unless otherwise noted.

Subpart A—General

2. Section 668.4 is added to read as follows:

§ 668.4 Payment period.

(a) *Payment period for an eligible program that has academic terms and measures progress in credit hours.* For a student enrolled in an eligible program that uses semesters, trimesters, quarters, or other academic terms and measures progress in credit hours, the payment period is the semester, trimester, quarter, or other academic term.

(b) *Payment periods for an eligible program that measures progress in credit hours and does not have academic terms or measures progress in clock hours.* (1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student completes the first half of the program as measured in credit or clock hours; and

(ii) The second payment period is the period of time in which the student completes the second half of the program as measured in credit or clock hours.

(2) For a student enrolled in an eligible program that is more than one academic year in length—

(i) For the first academic year and any subsequent full academic year as measured in credit or clock hours—

(A) The first payment period is the period of time in which the student completes the first half of the academic year as measured in credit or clock hours; and

(B) The second payment period is the period of time in which the student completes the second half of that academic year;

(ii) For any remaining portion of an eligible program that is more than one-half an academic year but less than a complete academic year—

(A) The first payment period is the period of time in which a student completes the first half of the remaining portion of the eligible program as measured in credit or clock hours; and

(B) The second payment period is the period of time in which the student completes the remainder of the eligible program; and

(iii) For any remaining portion of an eligible program that is not more than half an academic year as measured in credit or clock hours, the payment period is the remainder of that eligible program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, if a student cannot earn half the credit hours in the program under paragraph (b)(1) of this section or half of the remaining portion of the eligible program under paragraph (b)(2)(i) and (b)(2)(ii) of this section until after the calendar midpoint between the first and last scheduled days of class, the second payment period begins on the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(ii) The date, as determined by the institution, that the student has completed half of the academic coursework.

(4) If an institution chooses to have more than two payment periods in an academic year, in a program of less than an academic year, or in the remaining portion of an eligible program under paragraph (b)(2) of this section, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070 *et seq.*)

Subpart B—Standards for Participation in Title IV, HEA Programs

3. Section 668.16 is amended by removing ''and'' at the end of paragraph (m)(2)(ii), removing the period at the end of paragraph (n), and inserting ''; and'', and adding a new paragraph (o) to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(o) Participates in the electronic services that the Secretary—

(1) Provides at no substantial charge to the institution; and

(2) Identifies through a notice published in the Federal Register.

* * * * *

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

4. Subpart K is amended by revising §§ 668.161 through 668.165 and § 668.166(a) and by adding a new § 668.167 to read as follows:

Subpart K—Cash Management

§ 668.161 Scope and purpose.

(a) *General.* (1) This subpart establishes the rules and procedures under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds. This subpart is intended to—

(i) Promote sound cash management of title IV, HEA program funds by an institution;

(ii) Minimize the financing costs to the Federal government of making title IV, HEA program funds available to a student or an institution; and

(iii) Minimize the costs that accrue to a student under a title IV, HEA loan program.

(2) The rules and procedures that apply to an institution under this subpart also apply to a third-party servicer.

(3) As used in this subpart—

(i) The title IV, HEA programs include only the Federal Pell Grant, FSEOG, Federal Perkins Loan, FWS, Direct Loan, and FFEL programs;

(ii) The term ''parent'' means a parent borrower under the PLUS programs;

(iii) With regard to the FFEL Programs, the term ''disburse'' means the same as deliver loan proceeds under 34 CFR Part 682 of the FFEL Program regulations; and

(iv) A day is a calendar day unless otherwise specified.

(4) *FWS Program.* An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures and requirements under this subpart.

(b) *Federal interest in title IV, HEA program funds.* Except for funds received by an institution for administrative expenses and for funds used for the Job Location and Development Program under the FWS Programs, funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary. The institution, as a trustee of Federal funds, may not use or hypothecate (*i.e.*, use as collateral) title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1094)

§ 668.162 Requesting funds.

(a) *General.* The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution in advance of the institution's need for those funds (advance payment method), by the date the institution needs those funds (just-in-time payment method), or by reimbursing an institution for disbursements already made to eligible students and parents (reimbursement payment method).

(b) *Advance payment method.* Under the advance payment method—

(1) An institution submits a request for funds to the Secretary. The institution's request for funds may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents;

(2) If the Secretary accepts that request, the Secretary initiates an electronic funds transfer (EFT) of that amount to a bank account designated by the institution; and

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than 3 business days following the date the institution received those funds.

(c) *Just-in-time payment method.* Under the just-in-time payment method—

(1) For each student that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student. As part of those records, the institution reports the date and amount of the disbursements that it will make or has made to that student or that student's parent;

(2) For each record the Secretary accepts for a student or parent, the Secretary provides by EFT the corresponding disbursement amount to the institution on or before the date reported by the institution for that disbursement;

(3) When the institution receives the funds for each record accepted by the Secretary, the institution may disburse those funds based on its determination at the time the institution transmitted that record to the Secretary that the student is eligible for that disbursement; and

(4) The institution must report any adjustment to a previously accepted record within the time established by the Secretary in a notice published in the Federal Register.

(d) *Reimbursement payment method.* Under the reimbursement payment method—

(1) An institution must first make disbursements to students and parents for the amount of funds those students and parents are eligible to receive under the Federal Pell Grant, Direct Loan, and campus-based programs before the institution may seek reimbursement from the Secretary for those disbursements. The Secretary considers an institution to have made a disbursement if the institution has either credited a student's account or paid a student or parent directly with its own funds;

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the actual disbursements the institution has made to students and parents included in that request;

(3) As part of the institution's reimbursement request, the Secretary requires the institution to—

(i) Identify the students for whom reimbursement is sought; and

(ii) Submit to the Secretary or entity approved by the Secretary documentation that shows that each student and parent included in the request was eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(4) The Secretary approves the amount of the institution's reimbursement request for a student or parent and pays the institution that amount, if the Secretary determines with regard to that student or parent that the institution—

(i) Accurately determined the student's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds paid to the student or parent; and

(iii) Submitted the documentation required under paragraph (d)(3) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.163 Maintaining and accounting for funds.

(a) (1) *Bank or investment account.* An institution must maintain title IV, HEA program funds in a bank or investment account that is Federally insured or secured by collateral of value reasonably equivalent to the amount of those funds.

(2) For each bank or investment account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by—

(i) Including in the name of each account the phrase ''Federal Funds''; or

(ii)(A) Notifying the bank or investment company of the accounts that contain title IV, HEA program funds and retaining a record of that notice; and

(B) Except for a public institution, filing with the appropriate State or municipal government entity a UCC–1 statement disclosing that the account contains Federal funds and maintaining a copy of that statement.

(b) *Separate bank account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate bank or investment account that contains no other funds if the Secretary determines that the institution failed to comply with—

(1) The requirements in this subpart;

(2) The recordkeeping and reporting requirements in subpart B of this part; or

(3) Applicable program regulations.

(c) *Interest-bearing or investment account.* (1) An institution must maintain the Fund described in § 674.8(a) of the Federal Perkins Loan Program regulations in an interest-bearing bank account or investment account consisting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States. Interest or income earned on Fund proceeds are retained by the institution as part of the Fund.

(2) Except as provided in paragraph (c)(3) of this section, an institution must maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account as described in paragraph (c)(1) of this section.

(3) An institution does not have to maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account for an award year if—

(i) The institution drew down less than a total of $3 million of those funds in the prior award year and anticipates that it will not draw down more than that amount in the current award year;

(ii) The institution demonstrates by its cash management practices that it will not earn over $250 on those funds during the award year; or

(iii) The institution requests those funds from the Secretary under the just-in-time payment method.

(4) If an institution maintains Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing or investment account, the institution may keep the initial $250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over $250.

(d) *Accounting and internal control systems and financial records.* (1) An institution must maintain accounting and internal control systems that—

(i) Identify the cash balance of the funds of each title IV, HEA program that are included in the institution's bank or investment account as readily as if those program funds were maintained in a separate account; and

(ii) Identify the earnings on title IV, HEA program funds maintained in the institution's bank or investment account.

(2) An institution must maintain its financial records in accordance with the provisions under 34 CFR 668.24.

(e) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to maintaining and investing title IV, HEA program funds.

(Authority: 20 U.S.C. 1094)

§ 668.164 Disbursing funds.

(a) *Disbursement.* An institution makes a disbursement of title IV, HEA program funds on the date that the institution credits a student's account at the institution or pays the student or parent directly with—

(1) Funds received from the Secretary;

(2) Funds received from a lender under the FFEL Programs; or

(3) Institutional funds used in advance of receiving title IV, HEA program funds.

(b) *Disbursements by payment period.* (1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. Except as provided in paragraph (g) of this section, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

(2) The provisions of paragraph (b)(1) of this section do not apply to the disbursement of FWS Program funds.

(3) For a student enrolled in an eligible program at an institution that measures academic progress in clock hours, in determining whether the student completes the clock hours in a payment period, an institution may include clock hours for which the student has an excused absence if—

(i) The institution has a written policy that permits excused absences; and

(ii) The number of excused absences under the written policy for purposes of

this paragraph does not exceed the lesser of—

(A) The policy on excused absences of the institution's accrediting agency or, if the institution has more than one accrediting agency, the agency designated under 34 CFR part 600.11(b);

(B) The policy on excused absences of any State agency that licenses the institution or otherwise legally authorizes the institution to operate in the State; or

(C) Ten percent of the clock hours in the payment period.

(4) For purposes of paragraph (b)(3) of this section, an ''excused absence'' is an absence that a student does not have to make up.

(c) *Direct payments.* An institution pays a student or parent directly by—

(1) Releasing to the student or parent a check provided by a lender to the institution under an FFEL Program;

(2) Issuing a check or other instrument payable to and requiring the endorsement or certification of the student or parent. An institution issues a check by—

(i) Releasing or mailing the check to a student or parent; or

(ii) Notifying the student or parent that the check is available for immediate pickup;

(3) Initiating an electronic funds transfer (EFT) to a bank account designated by the student or parent; or

(4) Dispensing cash for which an institution obtains a signed receipt from the student or parent.

(d) *Crediting a student's account at the institution.*

(1) Without obtaining the student's or parent's authorization under § 668.165, an institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy current charges for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Room, if the student contracts with the institution for room.

(2) After obtaining the appropriate authorization from a student or parent under § 668.165, the institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy—

(i) Current charges that are in addition to the charges described in paragraph (d)(1) of this section that were incurred by the student at the institution for educationally related activities; and

(ii) Minor prior award year charges if these charges are less than $100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs.

(3) If an institution disburses Direct Loan Program funds by crediting a student's account at the institution, the institution must first credit the student's account with those funds to pay for outstanding current and authorized charges.

(4) For purposes of this paragraph, current charges refers to charges assessed the student by the institution for—

(i) The current award year; or

(ii) The loan period for which an institution certified or originated a loan under the FFEL or Direct Loan programs.

(e) *Credit balances.* Whenever an institution disburses title IV, HEA program funds by crediting a student's account and the total amount of all title IV, HEA program funds credited exceeds the amount of tuition and fees, room and board, and other authorized charges the institution assessed the student, the institution must pay the resulting credit balance directly to the student or parent as soon as possible but—

(1) No later than 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(2) No later than 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(f) *Early disbursements.* (1) Except as provided under paragraph (f)(2) of this section, the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is the later of—

(i) Ten days before the first day of classes of the payment period; or

(ii) The date the student completed the previous payment period for which he or she received title IV, HEA program funds, except that this provision does not apply to the payment of Direct Loan or FFEL program funds under the conditions described in 34 CFR 685.301 paragraphs (b)(3)(ii), (b)(5), and (b)(6) and 34 CFR 682.604 paragraphs (c)(6)(ii), (c)(7), and (c)(8), respectively.

(2) The earliest an institution may disburse the initial installment of a loan under the Direct Loan or FFEL programs to a first-year, first-time borrower as described in 34 CFR 682.604(c) and 685.303(b)(4) is 30 days after the first day of the student's program of study.

(g) *Late disbursements.* (1) *Ineligible students who may receive a late disbursement.* An institution may make a late disbursement to an ineligible student under paragraph (g)(2) of this section if the student became ineligible solely because—

(i) For purposes of the Direct Loan and FFEL programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; and

(ii) For purposes of the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for late disbursements.* An institution may disburse funds under a title IV, HEA program to an ineligible student described in paragraph (g)(1) of this section if, before the date the student became ineligible—

(i) The institution received a SAR from the student or an ISIR from the Secretary; and

(ii) (A) For a Direct Loan Program loan, the institution created the electronic origination record for that loan. An institution may not make a late second or subsequent disbursement of a Direct Subsidized or Direct Unsubsidized loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(B) For an FFEL Program loan, the institution certified an application for that loan. An institution may not make a late second or subsequent disbursement of a Stafford loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(C) For a Direct Loan or FFEL Program loan, the student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in 34 CFR 682.604(c)(5) or 685.303(b)(4);

(D) For a Federal Pell Grant Program award, the institution received a valid SAR from the student or a valid ISIR from the Secretary; and

(E) For a Federal Perkins Loan Program loan or an FSEOG Program award, the institution received from the student an acceptance of that loan or award.

(3) *Making a late disbursement.* If a student qualifies for a late disbursement under paragraphs (g) (1) and (2) of this section—

(i) The institution may make that late disbursement of title IV, HEA program funds only if the funds are used to pay for educational costs that the institution determines the student incurred for the period in which the student was enrolled and eligible; and

(ii) If the institution chooses to make a late disbursement, it must make that late disbursement no later than 90 days after the date the student becomes

ineligible under paragraph (h)(1) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.165 Notices and authorizations.

(a) *Notices.* (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include FFEL or Direct Loan Program funds, the notice provided by the institution must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) If an institution credits a student's account at the institution with Direct Loan, FFEL, or Perkins Loan Program funds, or initiates an EFT of those funds to the student's or parent's bank account and subsequently withdraws funds from that bank account to pay for tuition and fees or other authorized charges, the institution must notify the student, and parent if PLUS Loan funds are being disbursed, of—

(i) The date and amount of the disbursement;

(ii) The student's right, or in the case of a PLUS loan the parent's right, to cancel that loan or loan disbursement and have the loan proceeds returned to the holder of that loan. However, the institution does not have to provide this information with regard to FFEL Program funds unless the institution received the loan funds from a lender through an EFT payment or master check; and

(iii) The procedures and the time by which the student or parent must notify the institution that he or she wishes to cancel the loan or loan disbursement.

(3) The institution must send the notice described in paragraph (a)(2) of this section—

(i) No earlier than 10 days before and no later than 10 days after either crediting the student's account at the institution or crediting the student's or parent's bank account; and

(ii) Either in writing or electronically. If the institution sends the notice electronically, it must require the recipient of the notice to confirm receipt of the notice and must maintain a copy of that confirmation.

(4)(i) If a student or parent wishes to cancel a loan or loan disbursement, the student or parent must submit that cancellation request to the institution.

(ii) If the institution receives the cancellation request within 14 days after the date the institution sent the notice described in paragraph (a)(2) of this section, the institution must return the loan proceeds, cancel the loan, or do both, in accordance with applicable program regulations.

(iii) If a student or parent submits a cancellation request after the period set forth in paragraph (a)(4)(ii) of this section, the institution may return the loan proceeds, cancel the loan, or do both, in accordance with applicable program regulations.

(5) An institution must inform a student or parent in writing or electronically regarding the outcome of any cancellation request.

(b) *Student or parent authorizations.* (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Disburse title IV, HEA program funds to a bank account designated by the student or parent;

(ii) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(d)(2) that are included in that authorization; and

(iii) Hold on behalf of the student or parent any title IV, HEA program funds that would otherwise be paid directly to the student or parent under § 668.164(f).

(2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1) of this section, an institution—

(i) May not require or coerce the student or parent to provide that authorization;

(ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under § 668.164(d)(2), the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(iii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(iii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of funds the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

(Authority: 20 U.S.C. 1094)

§ 668.166 Excess cash.

(a) *General.* (1) The Secretary considers excess cash to be any amount of title IV, HEA program funds, that an institution does not disburse to students by the end of the third business day following the date the institution received those funds from the Secretary. Except as provided in paragraph (b) of this section, an institution must return promptly to the Secretary any amount of excess cash in its account or accounts.

(2) The provisions in this section do not apply to the title IV, HEA program funds that an institution receives from the Secretary under the just-in-time payment method.

* * * * *

§ 668.167 FFEL Program funds.

(a) *Requesting FFEL Program funds.* In certifying a loan application for a borrower under § 682.603—

(1) An institution may not request a lender to provide loan funds by EFT or master check—

(i) Earlier than 27 days after the first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Earlier than 13 days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford Loan Program borrowers; and

(2) An institution may not request a lender to provide loan funds by check requiring the endorsement of the borrower—

(i) Earlier than the first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Earlier than 30 days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford borrowers; and

(3) (i) An institution may not request a lender to provide loan funds by EFT or master check for any Federal PLUS Program loan earlier than provided in paragraph (a)(1) of this section.

(ii) An institution may not request a lender to provide loan funds by check requiring the endorsement of the borrower for any Federal PLUS Program loan earlier than provided in paragraph (a)(2) of this section.

(b) *Returning funds to a lender.* Except as provided in paragraph (c) of this section, an institution must return FFEL Program funds to a lender if the institution does not disburse those funds to a student or parent for a payment period within—

(1) (i) Three business days following the date the institution receives the funds if a lender provides those funds via EFT or by master check; or

(ii) Thirty days after the institution receives the funds if a lender provides those funds by a check payable to the borrower or copayable to the borrower and the institution.

(c) *Delay in returning funds to a lender.* An institution may delay returning FFEL program funds to a lender for—

(1) Ten days after the date set forth in paragraph (b) of this section if the institution—

(i) Does not disburse FFEL Program funds to a borrower because the student did not complete the required number of clock or credit hours in a preceding payment period; and

(ii) Determines that the student will complete the required hours within this 10-day period; or

(2) Thirty days after the date set forth in paragraph (b) of this section if the Secretary places the institution on the reimbursement payment method under paragraph (d) or (e) of this section.

(d) *An institution placed under the reimbursement payment method.* (1) If the Secretary places an institution under the reimbursement payment method for the Federal Pell Grant, Direct Loan and campus-based programs, the institution—

(i) May not disburse FFEL Program funds to a borrower until the Secretary approves a request from the institution to make that disbursement for that borrower; and

(ii) If prohibited by the Secretary, may not certify a borrower's loan application until the Secretary approves a request from the institution to make that certification for that borrower.

(2) In order for the Secretary to approve a disbursement or certification request from the institution, the institution must submit documentation to the Secretary or entity approved by the Secretary that shows that each borrower included in that request whose loan has not been disbursed or certified is eligible to receive that disbursement or certification.

(3) Pending the Secretary's approval of a disbursement or certification request, the Secretary may—

(i) Prohibit the institution from endorsing a master check or obtaining a borrower's endorsement of any loan check the institution receives from a lender;

(ii) Require the institution to maintain loan funds that it receives from a lender via EFT in a separate bank account that meets the requirements under § 668.164; and

(iii) Prohibit the institution from certifying a borrower's loan application.

(e) *An institution participating solely in the FFEL Programs.* If the FFEL Programs are the only title IV, HEA programs in which an institution participates and the Secretary determines that there is a need to strictly monitor the institution's participation in those programs, the Secretary may subject the institution to the conditions and limitations contained in paragraph (d) of this section.

(Authority: 20 U.S.C. 1094)

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 674.2(a) is amended by adding the term ''Payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 674.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:.

* * * * *

7. Section 674.2(b) is amended by removing the definition of the term ''*Payment period''.

PART 675—FEDERAL WORK-STUDY PROGRAMS

8. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756b, unless otherwise noted.

9. Section 675.2(b) is amended by removing the definition of the term ''*Payment period''.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

10. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070–3, unless otherwise noted.

11. Section 676.2(a) is amended by adding the term ''Payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 676.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

12. Section 676.2(b) is amended by removing the definition of the term ''*Payment period''.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

13. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

14. Section 682.200(a)(1) is amended by adding the term ''Payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 682.200 Definitions.

(a)(1) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

15. Section 682.207 is amended by adding paragraphs (c) (5) and (6) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) * * *

(5) If one or more payment periods have elapsed before a lender makes a disbursement, the lender may include in the disbursement loan proceeds for completed payment periods.

(6) A lender is not required to make more than one disbursement if a school is not in a State.

* * * * *

16. Section 682.603 is amended by revising paragraph (a)(5) to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

(a) * * *

(5) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in § 682.604(c); and

* * * * *

17. Section 682.604 is amended by adding paragraphs (c) (6) through (9) read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(6) Notwithstanding any other provision of this section, unless § 682.207(c) (5) or (6) applies—

(i) If a loan period is more than one payment period, the school shall deliver loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school shall make at least two deliveries of loan proceeds during that payment period. The school may not make the second delivery until the calendar midpoint between the first and last scheduled days of class of the loan period.

(7) If an educational program measures academic progress in credit hours and does not use semesters, trimesters, or quarters, the school may not make a second disbursement until the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the institution, that the student has completed half of the academic coursework in the loan period.

(8) If an educational program measures academic progress in clock hours, the school may not make a second disbursement until the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the institution, that the student has completed half of the clock hours in the loan period.

(9) The school must deliver loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

18. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1078a *et seq.*, unless otherwise noted.

19. Section 685.102(a)(1) is amended by adding the term ''Payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 685.102 Definitions

The (a)(1) definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:.

* * * * *

20. Section 685.301 is amended by revising paragraph (b) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(b) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school that originates loans shall determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

(2) Unless paragraph (b) (5), (6), or (7) of this section applies, an institution shall disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (b) (4), (5), or (6) of this section applies—

(i) If a loan period is more than one payment period, the school shall disburse loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school shall make at least two disbursements during that payment period. The school may not make the second disbursement until the calendar midpoint between the first and last scheduled days of class of the loan period.

(4)(i) If one or more payment periods have elapsed before a school makes a disbursement, the school may include in the disbursement loan proceeds for completed payment periods; or

(ii) If the loan period is equal to one payment period and more than one-half of it has elapsed, the school may include in the disbursement loan proceeds for the entire payment period.

(5) If an educational program measures academic progress in credit hours and does not use semesters, trimesters, or quarters, the school may not make a second disbursement until the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the institution, that the student has completed half of the academic coursework in the loan period.

(6) If an educational program measures academic progress in clock hours, the school may not make a second disbursement until the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the institution, that the student has completed half of the clock hours in the loan period.

(7) The school must disburse loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(8) A school not in a State is not required to make more than one disbursement.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

21. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

22. Section 690.2(a) is amended by adding the term ''Payment period'' in alphabetical order and revising the heading and introductory clause to read as follows:

§ 690.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

§ 690.3 [Removed and reserved]

23. Section 690.3 is removed and reserved.

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Part V

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206

Amendments to Gas Valuation Regulations for Indian Leases; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

RIN 1010–AB57

Amendments to Gas Valuation Regulations for Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its regulations governing the valuation for royalty purposes of natural gas produced from Indian leases. These changes would add alternative valuation methods to the existing regulations. The proposed rule represents recommendations of the MMS Indian Gas Valuation Negotiated Rulemaking Committee (Committee). This proposed rule also contains two new MMS forms and solicits comments on these information collections.

DATES: Comments must be submitted on or before November 22, 1996.

ADDRESSES: Mail written comments, suggestions, or objections regarding the proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165, courier address is: Building 85, Denver Federal Center, Denver, Colorado 80225, or e:Mail David__Guzy@smtp.mms.gov. MMS will publish a separate notice in the Federal Register indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432, FAX (303) 231–3194, e:Mail David__Guzy@smtp.mms.gov, Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Donald T. Sant, Connie Bartram, and Greg Smith of the MMS, and Peter Schaumberg of the Office of the Solicitor. Members of the MMS Indian Gas Valuation Negotiated Rulemaking Committee also participated in the preparation of this proposed rule.

I. Introduction

On August 4, 1994, MMS published an Advance Notice of Proposed Rulemaking regarding the possible amendment of the valuation regulations for gas production from Indian leases (59 FR 39712). The stated intent of any amendments was to ensure that Indian mineral lessors received the maximum revenues from mineral resources on their land consistent with the Secretary of the Interior's (Secretary) trust responsibility and lease terms. It was also MMS's desire to improve the regulatory framework so that information was available which would permit lessees to comply with the regulatory requirements at the time that royalties were due.

On January 31, 1995, the Secretary chartered the Committee to develop specific recommendations with respect to the valuation of gas production from Indian leases (60 FR 7152, February 7, 1995). Members of the Committee included representatives of the Navajo Nation, the Jicarilla Apache Tribe, the Native American Rights Fund, the Shoshone and Arapaho Tribes of the Wind River Reservation, the Northern Ute Tribe, the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, the Council of Energy Resource Tribes, the Shii Shi Keyah Association, the Council of Petroleum Accountants Societies (COPAS), the Rocky Mountain Oil and Gas Association (RMOGA), the Independent Petroleum Association of Mountain States (IPAMS), a major producer, the Mid-continent Oil & Gas Association, the Bureau of Indian Affairs, and MMS.

There were 19 members on the Committee. The Committee agreed that a minimum of 14 people had to be in attendance to conduct the business of the Committee. The Committee also agreed that it was necessary to have a 2/3 vote of the members present in favor of a proposal to adopt the proposal as a Committee recommendation.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. All of the Committee sessions were announced in the Federal Register, were open to the public, and provided an opportunity for public input. In addition, any interested persons may submit written comments, suggestions, or objections regarding this proposed rule to the location identified in the ADDRESSES section of this preamble. As an aid to public participation in this rulemaking, comments received will be posted on the internet at http://www.rmp.mms.gov unless the submitter has requested confidentiality.

MMS commends the Committee's ability to compromise and develop a proposal that would simplify royalty payments on natural gas produced from Indian leases, provide lessees with the information to comply with the regulations at the time royalties are due, decrease administrative costs, decrease litigation costs, and provide the Indian lessors with the maximum revenue consistent with their lease terms.

II. General Description of the Proposed Rule

In August 1996, the Committee published its final report which summarizes the Committee's recommendations. This report forms the basis for many of the proposals in this rulemaking and is an essential part of the regulatory history for this proposed rulemaking. Contact the person listed in **FOR FURTHER INFORMATION CONTACT** section or use the Internet access (http://www.rmp.mms.gov) to obtain a copy of the report.

The proposed rulemaking would simplify and add certainty to the valuation of production from Indian leases. It provides a methodology to calculate the value of production for standard form Tribal and allottee Indian leases that provide for value to be based on factors including the highest price paid or offered for a major portion of gas (major portion) at the time royalty payments are due. Most valuation would be based on published index prices for gas production from leases on reservations. It would also provide an alternative methodology for dual accounting. Thus, the lessee could elect to simplify the calculations for the requirement to pay royalties on the greater of the combined value of the residue gas and gas plant products resulting from processing the gas, or the value of the gas prior to processing.

This proposed rule would eliminate the need to calculate specific transportation allowances in most cases. Also, processing allowance calculations for lessees choosing the alternative methodology for dual accounting would be eliminated.

The requirement to file transportation or processing allowance forms in anticipation of claiming an allowance would be eliminated. In cases where lessees still would claim an allowance, data to verify the allowance claimed would be submitted to MMS.

These proposed rules contain two new MMS forms: Form MMS–4410, Certification for Accounting for Comparison, and Form MMS–4411, Safety Net Report. These forms are attached to this notice of proposed rulemaking as appendix A and appendix B. Commenters are requested to provide comments on these forms according to the information under the ''Paperwork Reduction Act'' in part IV. Procedural Matters of this notice.

A description of the major regulatory changes proposed in this rulemaking is provided in the next section. MMS recently restructured 30 CFR part 206 to create separate subparts applicable only to Indian leases (61 FR 5448, February 12, 1996). This was necessary because MMS made changes to the valuation regulations applicable to Federal leases that do not apply to Indian leases. This proposed rule also restructures 30 CFR part 202 to have separate sections for Federal and Indian leases. Thus, all the Indian valuation rules and procedures would be contained in a new subpart J of 30 CFR part 202 and subpart E in 30 CFR part 206.

In situations where the new index-based or other alternative valuation methods would be inapplicable, MMS would retain much of the structure of the existing valuation rules in 30 CFR part 206. A few changes would be substantive. However, in an effort to clarify and simplify those rules, MMS would be incorporating many changes to those sections that are not substantive but are an effort to implement concepts of *plain English*.

Also, on July 31, 1996, (62 FR 39931) MMS published a proposed rulemaking to amend the transportation allowance regulations for Federal and Indian leases. That proposed rule would clarify which costs are deductible as transportation costs and which costs are not deductible because they are not costs of transportation. MMS will incorporate in this rule any changes as a result of that proposed rulemaking.

III. Description of the Regulatory Proposal

30 CFR Part 202

MMS proposes to amend part 202 to add a new subpart J as described below. Where necessary, MMS will change the references to the applicable subparts of 30 CFR part 206 as they pertain to Indian gas, and will rename subpart D in part 202 as Federal Gas.

Section 202.550 How to Determine the Royalty Due on Gas Production

MMS is adding paragraph names to highlight the information contents of proposed § 202.550. In paragraph (a), MMS proposes that a Tribe rather than MMS would decide when the lessor would take Indian gas royalty in-kind. This paragraph also contains a new provision stating that a lessee of an Indian lease who demonstrates economic hardship may request a royalty rate reduction which is subject to the approval of the Indian lessor and the Secretary. MMS specifically would like comment on whether the Department should provide approval for allotted leases rather than seeking approval of the many individual allottees who may share in a single lease.

Proposed § 202.550(b) would require that you pay royalties on your entitled share of gas production from Indian leases not in approved Federal agreements, a defined term. It provides that you may pay on your takes if you notify the Associate Director for Royalty Management in writing that all persons paying royalties on the lease also agree to pay on their takes. However, if you pay royalties on your takes that are less than your entitled share, you are still liable for the royalties on your entitled share if the person taking the production does not pay the royalties that are owed. For example, assume there are two lessees each owning 50 percent of an Indian lease, and the production for a month is 100 Mcf. If lessee A takes 25 Mcf, and lessee B takes 75 Mcf, lessee A pays royalties on 25 Mcf, but is still liable for royalties on 50 Mcf if for some reason lessee B does not pay royalties on the 75 Mcf it took.

In proposed § 202.550(c), MMS has organized the regulation into paragraphs (i) Royalty rate; (ii) Volume; and (iii) Value, to clarify the way gas produced within an approved Federal agreement (AFA—including units and communitization agreements) must be calculated, reported, and paid to MMS or the Tribe.

In proposed § 202.550(c), MMS proposes to retain the requirement that royalty is due on the full monthly share of production allocated to an Indian lease under the terms of the AFA at the royalty rate specified in the lease. However, MMS is adding clarification that royalty would be due on each lessee's (generally operating rights owner's) entitled share of production allocable to the lease.

If a lessee takes its entitled share of production, value would be determined under 30 CFR part 206 for the full volume. However, a lessee may take more or less than its entitled share in a month. MMS proposes that the value for royalty purposes of the entitled share of production when the lessee (operating rights owner) takes more than its entitled share of the AFA production would be the weighted average value of the production taken. The existing regulations require lessees to distribute ratably from the overtaken leases to the undertaken leases using the value of the overtaken volumes. The proposed weighted average value would ease the valuation work for lessees, MMS, and Indian lessors.

Also included in § 202.550(c) would be procedures to value the portion of any production which a lessee is entitled to but does not take. If a lessee takes a portion of its entitled volumes, the value of production would be the weighted average value of the production that lessee took for the lease in the AFA. If a lessee takes none of its entitled volume, the value of production would be the index- based value (discussed later in this preamble) for leases in a zone with a valid index (discussed at 30 CFR 206.172). In a zone without a valid index, the value of production would be the first applicable of several benchmarks. The first benchmark under 30 CFR part 206 would be the weighted- average value of the gas that the lessee took from other leases in the same AFA that month. The second benchmark under 30 CFR part 206 would be the weighted-average value of production the lessee took from other Indian leases in the same field or area that month. The third benchmark under 30 CFR part 206 would be the weighted-average value of production the lessee took from Indian leases in the same AFA the previous month. The fourth benchmark under 30 CFR part 206 would be the weighted-average value of production the lessee took from Indian leases in the same field or area the previous month. The fifth and last benchmark would be the latest major portion value MMS sent to the lessee (discussed at 30 CFR 206.174).

Section 202.551 Standards for Reporting and Paying Royalties on Gas

This section is basically unchanged from the current regulations at § 202.152.

30 CFR Part 206

MMS is proposing to amend subpart E applicable only to Indian gas valuation. Many of the provisions are the same as in the existing rules in substance, but would be rewritten for purposes of clarity.

Section 206.170 What This Subpart Applies To

This section would be renamed and is basically the same as the existing rules. A new paragraph (c) would be added to allow valuation methodologies other than those prescribed in the rules if the lessee, Tribal lessor, and MMS jointly agree to the methodology. For Indian allottee leases, only MMS and the lessee must agree.

Section 206.171 Definitions

MMS would retain most of the definitions in § 206.171. However, new definitions would be added and existing

definitions revised to allow for the simplification of valuation methodologies. New definitions are proposed for: *active spot market, approved Federal agreement, dedicated, drip condensate, dual accounting, entitlement, facility measurement point, index, index pricing point, index zone, major portion, MMS, natural gas liquids, operating rights owner, takes,* and *zone.* These definitions will be discussed below where they appear in the text of the regulation.

The proposed rule would remove the definitions of *marketing affiliate* and *warranty contract* because they are no longer relevant to valuation in today's market. The definition of allowance would be revised to reflect the elimination of certain forms the existing regulations require.

Section 206.172 How To Value Gas Produced from Leases in an Index Zone

This section is proposed to be removed, and a new § 206.172 is proposed to be added. This section is the principal new provision of the proposed regulation. This proposal removes the existing text of § 206.172 and replaces it with new language explaining the new valuation principles in the rule. Where it is applicable, it would greatly simplify the gas valuation process. This section would determine the value of gas production using data available in national publications. Likewise, major portion calculations could be made from the information published monthly in various publications. It simplifies what has been a difficult royalty valuation calculation for MMS and one that lessees seldom could make. This new calculation also would provide increased revenue for Indian Tribes and allottees consistent with their lease terms.

This proposed § 206.172 establishes the rules for lessees to use an index-based valuation method to value gas production from leases in MMS-determined index zones. These index zones, defined in proposed § 206.171 as a geographic area containing blocks or fields that MMS will define, would reflect areas with active spot markets. An active spot market is defined in proposed § 206.171 as a market where one or more MMS-acceptable publications publish bidweek prices (or if bidweek prices are not available, first-of-the-month prices) for at least one index pricing point in the index zone. An index pricing point is defined in proposed § 206.171 as any point on a pipeline for which there is an index. An index zone could be a large area or a small area. For Jicarilla-Apache Reservation, Southern Ute Reservation and Navajo Nation Indian leases, one likely index zone would be the San Juan basin. This is because the publications who publish the index prices generally publish one index price for this entire area. Another likely index zone would be the *Rocky Mountain* zone, which would apply to the Uintah and Ouray Reservation and the Wind River Reservation.

Proposed paragraph (a) would provide that this index-based method applies to leases with a major portion provision, a defined term. In these leases, the Secretary may determine value based upon the highest price paid or offered for a major portion of gas production in the field. It also would apply to leases which do not have a major portion provision but provide for the Secretary to determine value. This section also would provide that this index-based value could not be used to value carbon dioxide, nitrogen, or other non-Btu components of the gas stream.

Proposed paragraph (b) explains how to value residue gas and gas prior to processing. This section also applies to gas that the lessee certifies to MMS that it is not processed before it flows into a pipeline with an index (i.e., a pipeline with published index prices) but which may in fact be processed downstream of that point. It also should be noted that this section applies to both arm's-length and non-arm's-length sales.

Under proposed paragraph (b)(2), the value of gas which is *not* sold under a dedicated contract (defined in 30 CFR 206.171), would be the index-based value calculated as described below. However, if that gas production was subject to a previous contract which was the subject of a gas contract settlement, the lessee would be required to compare the index-based value with the value determined under 30 CFR 206.174. That section basically applies the valuation procedures that have been in effect since 1988. Thus, for example, if the lessee's gross proceeds are higher, that would determine value. This was not a Committee recommendation, but is proposed by MMS to continue current policy. The issue of royalty on contract settlement proceeds is currently in litigation.

If the gas *is* sold under a dedicated contract, then the value is the higher of the index-based value, described below, or the value determined under 30 CFR 206.174.

This section of the proposed rule also makes the index-based method available to value processed gas. Under paragraph (c), if gas is processed before it flows into a pipeline with an index, value is the *higher* of:

- The index-based value, described below, or
- The value of the gas after processing, including the residue gas and all gas plant products.

The value of the gas after processing may be determined two ways. The first is to use the alternative method for dual accounting described below in § 206.173 (which applies a specified increment to the value of the unprocessed gas to reflect the increase in the value for processing). The second method is to determine the combined value of the residue gas (using either paragraph (b)(2) or (b)(3) of this section, described above), the gas plant products (using the applicable valuation procedures), and any drip condensate.

Paragraph (d) of proposed § 206.172 describes how to calculate the index-based value per MMBtu of production. This index-based value must be calculated separately for each zone where a lessee has production.

First, for each MMS-approved publication, the lessee must calculate the average (a simple arithmetic average) of the *highest* reported prices for all of the index pricing points in the index zone. This includes all index pricing points included in the publication even if the lessee does not sell any gas which flows through a particular index pricing point. As explained below, MMS may exclude certain index prices from the calculations. Next, these averages are summed and the total is divided by the number of publications. This average is then reduced by a factor of 10 percent, but not less than 10 cents or more than 30 cents per MMBtu. This reduction is intended to reflect an allowance for transportation. Therefore, when using this index-based method, no other transportation allowance will apply.

Proposed paragraph (d)(2) would provide that MMS will publish in the Federal Register the index zones that are eligible for the index-based valuation method. It also lists the criteria MMS will consider in determining eligible index zones. The criteria include common markets served and common pipeline systems. The published index prices within an index zone, therefore, should be similar.

One of the criteria in determining zone eligibility would be that MMS-approved publications establish index prices that accurately reflect the value of production in the field or area where the production occurs. This would allow MMS, in consultation with affected Tribes and industry, to consider whether a particular set of index prices properly reflect value near the production areas.

Proposed paragraph (d)(3) allows MMS to disqualify a zone if market conditions change. Before a zone is disqualified, MMS will hold a technical conference. MMS will publish any zone disqualifications in the Federal Register.

Proposed paragraph (d)(4) would provide that MMS publish the MMS-acceptable publications in the Federal Register. It also lists the criteria MMS will consider in determining acceptable publications. The criteria include that buyers and sellers frequently use the publications. Also, the publications must use adequate survey techniques, and they must be independent from MMS, lessors, and lessees.

Proposed paragraph (d)(5) would provide that publications could petition MMS to become an acceptable publication.

Proposed paragraph (d)(6) would allow MMS to exclude an individual index price for an index zone in a publication that MMS otherwise approves. This would allow exclusion of a particular index price that MMS may find to be anomalous without disqualifying the other index prices for other index zones in that publication.

Proposed paragraph (d)(7) would provide that MMS will specify which tables in the publications to use to determine the index-based value.

Proposed paragraph (d)(8) states that transportation or processing allowance deductions are not to be used if the index-based value is used to value gas production. As explained above, the index-based value has already been adjusted between 10 cents and 30 cents per MMBtu to reflect transportation. As explained below, the dual accounting provision of the rule would provide adjustments for processing gas.

To ensure that the index-based value represents market value, the proposed rule provides for two safeguards. The first safeguard would be situations where there are contracts that dedicate gas production from specific wells or leases to those sales contracts. The Committee was aware that certain sales contracts exist that are for higher prices than available under the current spot market. Thus, as explained above, under § 206.172(b)(3), for dedicated contracts the lessee would have to calculate its value under current principles (gross proceeds) in the regulations, less allowances, and compare that value to the index-based value. The lessee would pay royalties on the higher of the two values. The Committee agreed that the Indian lessor should receive the benefit from these higher price sales contracts. The Committee did not believe that this provision added complexity because most dedicated gas sales contracts were wellhead sales and all dedicated gas sales contracts were for gas sales before the index point. Lessees, therefore, would not have to trace gas sales beyond the index point.

The second safeguard is in proposed § 206.172(e) that provides for a minimum value for royalty purposes under this section, referred to as the safety net price. The published index prices reflect prices for gas sold in the spot market. The volume of gas being sold on the spot market currently is between 25–40 percent of total production. Therefore, to ensure that the index-based value represents the value of all market transactions, the Committee proposed a safety net to compare index prices to prices that reflect sales made beyond an index point. The safety net price would be calculated using prices received for gas sold downstream of the index point. It would include only the lessee's or its affiliates sales prices, and it would not require detailed calculations for the costs of transportation. This was a contentious issue with the industry representatives, as they object to tracing gas sales. They also believe that the index-based value is representative of market value.

By June 30 following each calendar year, the lessee would be required to calculate for each month of the calendar year a safety net price. This must be calculated for each index zone where the lessee has an Indian lease. The safety net price for each index zone would be the volume weighted average contract price per delivered MMBtu of gas sold under the lessee's arm's-length contracts for the disposition of gas from all of the lessee's leases in the same index zone (in this instance including the lessee's Federal, State and fee properties in addition to its Indian leases). However, the lessee would only include sales under those contracts that establish a delivery point beyond the first index pricing point to which the gas flows. Moreover, those contracts must include gas attributable to one or more of the lessee's Indian leases in the index zone. The safety net price would capture the significantly higher-values for sales occurring beyond the index point. The lessee would submit its safety net price to MMS annually (by June 30) using Form MMS–4411. For purposes of this subsection only, the contract price would not include any amounts the lessee received in compromise or settlement of a predecessor contract for that gas. The contract price also would not include any adjustments to that price for placing gas production in marketable condition or to market the gas, or for any amount related to marketable securities associated with the sales contract (e.g., NYMEX futures). Also, except as described below, no transportation allowance would be applicable.

The Committee recognizes that transportation adds value for sales beyond the index point. To adjust for this value, the lessee would reduce the safety net price by 20 percent before any comparison is made to the index-based value. Use of a percentage was selected to retain simplicity in these rules compared to requiring the calculation of the actual cost of transportation. The Committee agreed that the 20 percent figure was a reasonable approximation of transportation costs. This reduction for transportation is greater than the 10 percent reduction in § 206.172(d)(1) because the safety net prices relate to sales that occur further from the lease.

The amount that is 80 percent of the safety net price would be compared to the amount that is 125 percent of the monthly index value for the index zone. The use of 125 percent of the index value also recognizes that there can be value added services other than transportation after the index point. The lessee would owe additional royalties plus late-payment interest if 125 percent of the index value were less than 80 percent of the safety net price. To calculate the additional royalties owed, the lessee would multiply the safety net differential (the 80 percent figure minus the 125 percent figure) by the volume of the lessee's gas production from Indian leases in the index zone that is sold beyond the first index pricing point in the index zone through which the gas flowed. This is the gas production that was sold at the higher prices. The additional revenue would be allocated to each Indian lease in the index zone with production sold beyond the index pricing point. We call this safety net production. The additional revenue would be allocated by dividing the volume (in MMBtu's) of production from an Indian lease in the index zone by the total volume (in MMBtu's) of safety net production from all of the lessee's Indian leases and multiplied by the additional royalties owed. The Committee believed that index-based value was a good determinant of value for production sold before or at the index point, and any safety net price ought to apply only to the production that was sold at the higher prices.

The Committee had certainty as one of its goals. The proposed rule would give MMS 1 year from the date it receives the lessee's Form MMS–4411 providing the safety net price to order the lessee to amend its safety net price

calculation. If MMS did not order any adjustment to the safety net price, the safety net price would be final for the lessee.

Section 206.173 Alternative Methodology for Dual Accounting (Accounting for Comparison)

This section would be removed and a new § 206.173 is proposed that would offer an option for lessees to meet the dual accounting requirement in Indian leases, applicable to processed gas, using a simple calculation. Dual accounting is required under most Indian leases whenever gas is processed.

Under the proposed rule, a lessee would have the option to use the traditional dual accounting method in proposed § 206.176. This method compares the value of the gas prior to processing to the value of the residue gas, gas plant products, and drip condensate. Each of these values would be determined using the various valuation provisions of the rules, as appropriate. Royalty is due on the higher of the two values.

However, the proposed rule in § 206.173(b) also would provide the simpler alternative methodology for dual accounting. Under this method, the lessee first would determine the pre-processing value of the gas production using either § 206.172 or § 206.174. Then, a prescribed increment would be applied to reflect the increased value of the production after processing. Thus, value would be determined using the following equation:

Post-processing value = (Value determined in § 206.172 or § 206.174) × (1 + Increase for Dual Accounting).

The proposed increments are specified in § 206.173. They were calculated using two different values for the processing allowance of one test plant. A processing allowance of 33 percent was used to represent a typical allowance for a lessee that does not own an interest in the processing plant. A processing allowance of 20 percent was used as a typical allowance for a lessee that has an ownership interest in the processing plant. The increments represent the average uplifts in the value of gas prior to processing over several years of the value of gas after processing based on gas Btu quality and allowance data for one plant.

The dual accounting increase in wellhead value therefore would be based on two factors: The Btu quality at the facility measurement point, and whether the lessee has an ownership interest in the processing plant. The increments range from 2.75 percent to 35.5 percent. The Btu quality for any lease would be the weighted-average Btu content of all the wells in the lease or agreement measured at the facility measurement points.

Therefore, under this alternative methodology, if any of the gas from the lease was processed and the weighted-average Btu quality per cubic foot was greater than 1,000 Btu per cubic foot (Btu/cf), the lessee simply could choose to increase the value for all the gas prior to processing by the dual accounting increment and pay royalties on that value. If the weighted-average Btu quality per cubic foot for a month on a lease were less than 1,000 Btu/cf and some or all of the gas were processed, the lessee would use the alternative methodology for the volumes of lease production from wells whose quality exceeds 1,000 Btu/cf. For wells on the lease whose quality is equal to or less than 1,000 Btu/cf, dual accounting is not required. In this case, the lessee would report the volumes and the weighted-average Btu quality for wells above 1,000 Btu/cf as a separate item on Form MMS–2014, and report another line item for the volume of gas and the weighted-average quality for wells with Btu quality below 1,000 Btu/cf.

Under proposed § 206.173(a), lessees would make an election between actual dual accounting and the alternative methodology. The election must be made separately for each MMS-designated area. The election would apply to all the lessee's leases in that designated area. It could happen that co-lessees of a lease would use different dual accounting methods for their representative volumes because they have made different elections for all their respective lease interests in the designated area. Also, even if two co-lessees elected to use the alternative methodology, the resulting valuation could be different if one co-lessee owned an interest in the processing plant and therefore was required to use a higher increment. The designated areas are limited to:

Alabama-Coushatta
Blackfeet Reservation
Crow Reservation
Fort Belknap Reservation
Fort Berthold Reservation
Fort Peck Reservation
Jicarilla Apache Reservation
MMS-designated groups of counties in the State of Oklahoma
Navajo Reservation
Northern Cheyenne Reservation
Rocky Boys Reservation
Southern Ute Reservation
Turtle Mountain Reservation
Uintah and Ouray Reservation
Ute Mountain Ute Reservation
Wind River Reservation
Any other area that MMS designates.

MMS also will publish in the Federal Register a list of all Indian leases that are in a designated area for purposes of these regulations.

A lessee could elect to begin using the alternative methodology at the beginning of any month. Once made, the election would remain in effect until the end of the following calendar year. Thereafter, the election to use the alternative methodology must remain in effect for two calendar years, unless the lessee receives permission to change from MMS and, for Tribal leases, the Tribal lessor.

If any new wells come into production, or if the lessee acquires new leases in the designated area, they too must be subject to the election to use the alternative methodology.

Section 206.174 How To Value Gas Production When an Index- Based Method Cannot Be Used

Section 206.174 would be removed, and a new § 206.174 is proposed. This new section would apply to the valuation of gas production that:

- Is from leases outside an index zone;
- Is sold under dedicated contracts;
- Is a gas plant product subject to the actual dual accounting method where the actual processing costs are used for the processing allowance; or
- Is a non-Btu component of the gas stream.

This section would consolidate the valuation principles previously included in existing §§ 206.172 and 206.173 for the valuation of processed and unprocessed gas primarily to eliminate redundant provisions. These are the rules that have been in effect since 1988. It would incorporate the gross proceeds valuation principles and combine them into one section because there is no need to separate the valuation of unprocessed gas from processed gas.

This section also provides that MMS would calculate a major portion value from values lessees initially submitted to MMS using these gross proceeds principles. To do this, lessees would report their current production month's value based on the valuation methodology of the current regulations depending upon whether it was an arm's-length or non-arm's-length transaction. Thus, for gas sold under an arm's-length contract, the lessee would report its gross proceeds less applicable allowances. For gas sold under a non-arm's-length contract, the lessee would report its value after following the benchmarks specified in the rule at § 206.174. Lessees would be required to report allowances as separate items on

Form MMS–2014. The lessee would report the value as either processed gas and associated natural gas liquids or unprocessed gas.

Within 90 days of the reporting month, MMS would calculate a major portion value, described below, using lessees' reported values for unprocessed gas and residue gas for leases on each designated area (the same designated areas as under § 206.173). MMS would send written notice to each lessee of the major portion value applicable to its leases depending upon where they are located.

The lessee would have 30 days to submit amended Forms MMS–2014 to MMS if the major portion was higher than the lessee's previously reported value. Lessees also would compute their dual accounting value using the major portion value as the wellhead value per MMBtu. They could make the dual accounting calculation using the alternative methodology or the actual dual accounting method using the major portion value as the value of the residue gas. However, late payment interest on any underpayment associated with a higher major portion value would not begin to accrue until the date the amended Form MMS–2014 is due to MMS. The Committee did not consider it equitable to assess interest for periods before MMS notifies the lessee of the major portion value.

For each designated area, MMS would calculate the major portion value by arraying all of the prices and volumes of the gas reported on Form MMS–2014 for leases in the designated area. Prices would be reduced first for any allowable transportation costs. The lowest price would be at the bottom and the highest price at the top. The major portion would be the value at which 25 percent of the gas was sold starting down from the highest price paid. This would be a change from the current regulation of calculating the major portion value as the value at which 50 percent plus 1 Mcf of gas was sold starting from the bottom.

The Committee had considerable deliberation on this issue. Indian lessors have criticized MMS since the publication of the definition of the major portion value in 1988. They have argued that the definition of the major portion in the 1988 regulation does not adequately represent the lease terms on the highest price paid or offered for a major portion of production. They argue that *median* is not synonymous with *major*. The Committee agreed that the price at which 25 percent or more of the gas is sold is a reasonable compromise on the term *major*.

The Committee agreed that the major portion value at the 25th percentile from the top was a reasonable safeguard for royalty payments in non-index areas. Therefore, the Committee recommended that the MMS-computed major portion value not be subject to unilateral change by MMS once MMS issues a written notice, building certainty into the lessee's royalty valuation. That provision is in § 206.174(a)(4)(ii). A lessee or an Indian lessor could appeal the major portion value if they could demonstrate that MMS had not performed the calculation correctly.

The Committee discussed having a minimum value for gas plant products when the alternative methodology for dual accounting is not used to value the production and the lessee chooses to use the actual dual accounting methodology. The Committee did not agree on this issue, but voted to include in the proposed rule a minimum value based on some concepts MMS used previously in a procedure paper on natural gas liquid products valuation.

The proposal is included at § 206.174(g)(2). It specifies that for each gas plant product, the value cannot be less than the monthly average minimum price reported in commercial price bulletins less a specified estimate of the cost of transportation and fractionation. The average minimum price for production from leases in Colorado in the San Juan Basin, New Mexico, and Texas would be prices reported for gas plant products at Mont Belvieu less 8.0 cents for transportation and fractionation. The average minimum price for production from leases in Arizona, in Colorado outside the San Juan Basin, Minnesota, Montana, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming would be prices reported for gas plant products at Conway less 7.0 cents for transportation and fractionation.

We selected Mont Belvieu and Conway and divided the States among these two market centers based on our judgment of where production from these areas are transported for further fractionation and refining. The 8.0 cents per gallon for Mont Belvieu and the 7.0 cents per gallon for Conway are the best estimate of the cost of transportation from the areas plus the cost of fractionation. These estimates are not based on a detailed survey.

A commercial price bulletin is a bulletin such as ''Platt's Oilgram Price Report'' or the ''Bloomberg Report.'' The proposed rule would permit a lessee to use any price bulletin, but the lessee must use the same bulletin for all of a calendar year. The proposed rule would allow a substitute price bulletin if the bulletin a lessee was using ceased publication. The substitute bulletin would then be used for the rest of the calendar year.

If a lessee uses a commercial price bulletin that is published monthly, the monthly average minimum price is the minimum price reported by the bulletin. If a lessee uses a commercial price bulletin that is published weekly, the monthly average minimum price is the arithmetic average of the weekly minimum prices reported by the bulletin. If a lessee uses a commercial price bulletin that is published daily, the monthly average minimum price is the arithmetic average of the minimum prices reported by the bulletin for each Wednesday of the month.

MMS specifically requests comments on this proposal. Comments should address the following issues:

- Is a minimum value needed when a lessee chooses the actual dual accounting methodology?
- Are there other better methods to use?
- Are Conway and Mont Belvieu the proper locations to look for prices for gas plant products?
- Are the 7.0 and 8.0 cents per gallon the right deductions for transportation and fractionation?
- Would a percentage of the price or actual rates paid be a better deduction?

The remaining provisions of proposed § 206.174 are essentially the same as the existing rules except that the two duplicative sections applicable to unprocessed gas and processed gas would be consolidated into one section.

The Committee also believed that verification of value in certain areas without an index should be accomplished in a shorter period of time. The proposed rule includes a new provision in § 206.174(l) that for leases in Montana and North Dakota, lessees must make adjustments sooner, and MMS must complete its audits sooner than either has done historically. The rule would be limited to Indian leases in these two States because at this time there are no acceptable published indexes applicable to that area.

Therefore, under this section, if value is determined without deduction of a transportation or processing allowance, or if the allowance is determined under an arm's- length contract, a lessee must make all adjustments to value within 13 months of the production month. MMS must conclude any audit and order any adjustments to royalty value within 12 months after the adjustment reporting date. MMS has been defined to include Tribal auditors where appropriate acting under agreements pursuant to the Federal Oil and Gas Royalty

Management Act or other applicable agreements. As explained below, there are circumstances where these dates would be extended.

For royalty value which is determined using a non-arm's-length transportation or processing allowance, all adjustments must be made within 9 months of the submittal of the actual cost allowance report to MMS. MMS must conclude any audit and order any adjustments to royalty value within 12 months after the adjustment reporting date. If the lessee has both allowances, the period runs from the date MMS receives the later of the two reports.

The proposed rule provides exceptions to the time limit on completing audits and issuing orders. These exceptions are:

- When disputes exist between lessees and purchasers, transporters or processors, the time period for the lessee to make adjustments would extend until 6 months after resolution of the dispute. The period to audit and issue demands would be correspondingly extended;
- When the lessee and MMS agree to extend the time;
- When there is a pending regulatory proceeding by any agency with jurisdiction over gas sales prices (e.g., the Federal Energy Regulatory Commission or a State public utility commission), the time period for the lessee to make adjustments is extended for 90 days after that proceeding concludes (including judicial review). The period to audit and issue demands would be correspondingly extended;
- When the lessee fails or refuses to provide records or information necessary to complete the audit, the time period to issue demands or orders will be extended for any time periods that MMS cannot obtain the information. Thus, if MMS is required to issue a subpoena and it takes 2 years of judicial proceedings to enforce the subpoena, the time period to issue demands or orders would be extended until 12 months after those proceedings conclude;
- When the lessee intentionally misrepresents or conceals a material fact for the purpose of avoiding royalties, the time period to complete audits or issue demands, or orders would not be applicable.

This proposed section also would expressly provide that if a lessee becomes aware of an underpayment during the time period that adjustments may be made, it is required to report that adjustment. During an audit, if it is determined that the lessee made overpayments, the lessee may credit the overpayments for a lease against any underpayments on that same lease only discovered during the audit.

The proposed rule also would limit the time period for which MMS could issue a demand or order. Proposed paragraph (l)(3) would define *demand* or *order* to include restructured accounting orders that are based on repeated, systemic errors for a significant number of leases or a single lease for a significant number of reporting months. The restructured accounting order must specify the reason and factual basis for the order.

Section 206.175 How To Determine Quantities and Qualities of Production for Computing Royalties

This section would be removed, and a new § 206.175 would be proposed and would retain some of the existing regulations and also include some new provisions. The proposal revises existing language in this section to reflect new provisions for computing royalties. The Committee agreed to add Btu quality information to Form MMS–3160, Monthly Report of Operations, for each well. With this additional information, the Indian lessors and MMS could verify if the dual accounting alternative increment method was calculated correctly.

Valuation rules for production from Indian leases always have provided that a lessee must pay royalty for residue gas and gas plant products based on its share of the monthly net output of the plant. The problem was that lessees could not do this if they did not have access to plant data. Therefore, under the proposed rule, if a lessee has no ownership interest in the plant and does not operate the plant, it may use its contract volume allocation to determine its share of output. However, if the lessee has an ownership interest in the plant or if it operates the plant, then it must use calculated volumes as in the existing rules.

Section 206.176 How To Do Accounting for Comparison

This section would be removed, and a new § 206.176 is proposed to clarify when lessees must perform accounting for comparison under the proposed valuation methods and procedures in this subpart E. In summary:

- Accounting for comparison is required when gas is processed;
- When accounting for comparison is required, the lessee may use either actual dual accounting as described earlier in this preamble or the alternative valuation method described in § 206.173;
- If any gas flowing through a facility measurement point is processed, then all gas flowing through the facility measurement point is considered processed except as discussed below.
- To avoid accounting for comparison, a lessee must certify the gas was never processed prior to entering the pipeline with an index located in an index zone on Form MMS–4410.

Generally, if any gas production for a month is subject to dual accounting, that value sets the minimum value for all lease production that month. However, if any gas production from a lease for a month is processed, but the weighted average Btu quality is less than 1,000 Btu/cf, a different calculation is required. The proposed rule provides that the alternative method for dual accounting can be applied only to the volumes of gas production measured at the facility measurement point that exceeds 1,000 Btu/cf. Also, no dual accounting is required for the volumes of gas production measured at the facility measurement point which is less than 1,000 Btu/cf. This is discussed earlier in the preamble section discussing § 206.173.

Section 206.177 General Provisions Regarding Transportation Allowances

This section would be removed, and a new § 206.177 is proposed to recognize that while transportation allowances are not relevant to the proposed index-based valuation method at § 206.172, they are relevant to valuation in the following gas production situations at § 206.174:

- For leases not in an index zone;
- When gas is dedicated from a specific well or lease to a sales contract; and
- Non-Btu components of the gas stream.

For these situations, when a lessee values gas at a point distant from the lease, this section would authorize a transportation allowance for the reasonable actual costs of transporting gas to that distant point. The transportation allowance would be applicable to unprocessed gas, residue gas, and gas plant products. The lessee would be subject to the existing 50-percent limitation of the proceeds at the point distant from the lease. The proposed rule states that a lessee may not deduct any allowance for gathering costs, a defined term.

The other general transportation allowance provisions would remain the same.

Section 206.178 How To Determine a Transportation Allowance

This section would be removed, and a new § 206.178 is proposed to continue to differentiate between arm's-length

and non-arm's-length transportation contracts.

In § 206.178(a)(1)(i), for arm's-length transportation contracts, the proposed section would remove the requirement for a lessee to pre-file Form MMS–4295, Gas Transportation Allowance Report, before deducting a transportation allowance. In its place, the lessee would be required to submit to MMS a copy of any transportation contract, including amendments, the lessee used as a basis for the reported allowance. Those documents, to the extent not previously provided, are due to MMS within 2 months of when the lessee reported the transportation deduction on Form MMS–2014.

The Committee believes this change will ease the burden on industry and still provide MMS with documents useful to verify the allowance claimed. Written contracts will not necessarily be required. For example, in a situation where the sale is to a mainline pipeline and there is no contract, the lessee would submit to MMS the copy of the invoice it received from the mainline pipeline company to support its transportation costs.

In the new § 206.178(b)(1) for non-arm's-length transportation or no contract situations, MMS would remove the requirement that a lessee submit a completed Form MMS–4295 before deducting a transportation allowance on Form MMS–2014. Rather, MMS would require the lessee to submit its actual cost information (supporting its allowance taken) within 3 months after the end of the calendar year period (or other MMS-approved period) for which the allowance pertains. MMS may approve a longer time period and would continue to ensure that deductions are reasonable and allowable.

To further simplify the royalty valuation calculation, the Committee recommended to allow a lessee to use a simple percentage calculation of the proceeds in situations where the transportation was non-arm's-length. Therefore, under § 206.178(c), the authorized allowance would be a fixed 10 percent of the gross value (not to exceed 30 cents per MMBtu) at the sales point. The percentage method would be available to a lessee only if the transportation was provided at least in part through a lessee-owned transportation system.

The lessee would have to elect to use either the transportation allowance percentage or actual cost method for 1 year. The election would apply to all of the lessee's leases in a designated area. The lessee may elect to begin using the percentage method at the beginning of any month. The first election to use the percentage method would be effective from the time of election through the end of the following calendar year.

The Committee agreed to permit a percentage of proceeds to determine a transportation allowance to simplify the gas valuation regulations and to ease administration for lessees, lessors, and MMS. The Committee agreed to using 10 percent mainly to match the percentage it derived in the index-based value. However, to ensure the percentage reflects other similar allowances, MMS would have to periodically review the validity of the percentage. In addition, MMS's disqualification of an index zone would automatically require MMS to review and determine if a new percentage better reflects current transportation rates. Until such time as a new percentage had been established, the lessee would be allowed to use either actual costs of transportation or 10 percent of the gross value at the sales point.

From the existing § 206.177(c), *Reporting requirements,* MMS would retain only the requirement that the lessee must report transportation allowance deductions as a separate item on Form MMS–2014, unless MMS approves a different reporting procedure and must submit all information to MMS to support Form MMS–4295 at the request of MMS. All other provisions regarding allowance filings would be removed.

Section 206.179 General Provisions Regarding Processing Allowances

MMS would remove this section and propose a new § 206.179 and § 206.180 below.

The extraordinary cost allowance would be eliminated. MMS believes at this time that it would be a better exercise of the Secretary's trust responsibility to not allow extraordinary cost allowance for Indian leases. We also would not allow any allowance in excess of two-thirds of the value of the marketable product. This was not a Committee proposal.

Section 206.180 How to Determine an Actual Processing Allowance

Section 206.180 would be added. MMS would not require that a lessee file Form MMS–4109, Gas Processing Allowance Summary Report, on arm's-length processing contracts.

MMS proposes that in place of these forms, MMS would continue to require that a lessee submit arm's-length processing contracts, agreements, and related documents within 2 months of reporting an allowance deduction on Form MMS–2014.

MMS would remove the requirement for the lessee to submit a completed Form MMS–4109 before deducting its non-arm's-length processing costs on Form MMS–2014. Proposed § 206.180(b)(3) would provide that processing allowances under paragraph (b) must be determined based on a calendar year or other MMS-approved period.

The proposed rule would retain the requirement that upon MMS's request the lessee must submit all data it used to determine its processing allowance, and that processing allowances be reported as a separate item on Form MMS–2014, unless MMS approves a different reporting procedure.

MMS would not require pre-approval or pre-filing of processing allowances, but would retain interest assessments for any underpayment of royalties caused when a lessee erroneously deducted a processing allowance.

Section 206.181 Processing Allowances for Use in Certain Dual Accounting Situations

MMS would add this proposed new section to address how to apply processing allowances in cases where the lease requires dual accounting but the gas is not processed by or on behalf of the lessee. The proposed section provides four benchmarks the lessee would follow in these situations.

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule will amend regulations governing the valuation for royalty purposes of natural gas produced from Indian leases. These changes would add several alternative valuation methods to the existing regulations. Small entities are encouraged to comment on this proposed rule.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, Tribal, State governments, or the private sector.

Executive Order 12630

The Department 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, Government Action and Interference with Constitutionally Protected Property Rights.

Executive Order 12988

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action requiring Office of Management and Budget review.

Paperwork Reduction Act

This proposed rule contains two collections of information which have been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior, Washington, DC 20503. Send copies of your comments to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, PO Box 25165, MS 3101, Denver, Colorado, 80225–0165; courier address is: Building 85, Denver Federal Center, Denver, Colorado 80225; e:Mail address is: David__Guzy@smtp.mms.gov.

One collection of information is titled ''Certification for Not Performing Accounting for Comparison (Dual Accounting).'' Accounting for comparison (dual accounting) is required by the terms of most Indian leases when gas produced from the lease is processed. To avoid dual accounting, a lessee must certify, using proposed Form MMS–4410 (Attachment 1), that the gas was never processed prior to entering the pipeline with an index located in an index zone. The lessee will be required to sign the certification form for each property having production that is exempt from dual accounting. This is a one time certification that will remain in effect until there is a change in lease status or ownership. This requirement will assist the Indian lessor in receiving all the royalties that are due and aid MMS in its compliance efforts.

Rules establishing the use of Form MMS–4410 to certify that gas production is not processed before it flows into a pipeline with an index but which may be processed later are at proposed 30 CFR 206.172(b)(1)(ii). The lessee or operator of an Indian lease will certify to MMS that gas produced from the lease specified on the form is not processed before entering a pipeline with an index located in an index zone. This certification will allow MMS and the tribes to better monitor compliance with the dual accounting requirement of Indian leases.

In most cases, the lessee or operator will directly know the disposition of the gas. If gas is sold at the wellhead, the lessee or operator may have to consult with the purchaser of the gas to find its disposition. Information provided on the forms may be used by MMS auditors, Valuation and Standards Division (VSD), and the Office of Indian Royalty Assistance.

MMS estimates the annual reporting burden to be approximately 5,412 hours. There are approximately 4,511 tribal and allotted Indian leases and 935 payors comprising the Indian lease universe. The MMS subject matter experts estimate that at most 30 percent of the Indian leases (1,353 leases) would not require accounting for comparison and would submit the certification forms. This one time filing as required by 30 CFR 206.172 (b)(1)(ii) could require about 3 hours per report to extract the data from company records or obtain the information from the purchaser. The certification will remain in effect until there is a change in lease status or ownership. Only a minimal recordkeeping burden would be imposed by this collection of information. Based upon $25 per hour, one time cost to industry is estimated to be $135,300.

The other collection of information contained in this proposed rule is titled ''Safety Net Report.'' The safety net calculation establishes the minimum value for royalty purposes. This requirement will assist the Indian lessor in receiving all the royalties that are due and aid MMS in its compliance efforts. The safety net price would be calculated using prices received for gas sold downstream of the index point. It would include only the lessee's sales prices, and it would not require detailed calculations for the costs of transportation. By June 30 following each calendar year, the lessee would be required to calculate for each month of the calendar year a safety net price. This must be calculated for each index zone where the lessee has an Indian lease. The safety net price would capture the significantly higher-values for sales occurring beyond the index point. The lessee would submit its safety net price to MMS annually (by June 30) using Form MMS–4411 (Attachment 2).

Rules establishing the use of Form MMS–4411 to report the safety net price are at proposed 30 CFR 206.172(e). The lessee would compare the amount that is 80 percent of the safety net price to the amount that is 125 percent of the monthly index value for the index zone. The lessee would owe additional royalties plus late-payment interest if 125 percent of the index value were less than 80 percent of the safety net price. The MMS would have 1 year from the date it receives the lessee's Form MMS–4411 providing the safety net price to order the lessee to amend its safety net price calculation. If MMS did not order any adjustment to the safety net price, the safety net price would be final for the lessee. This report will allow MMS and the tribes to ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms.

The lessee or operator will directly know the disposition of the gas and the safety net price would include only the lessee's sales prices. The lessee would only include sales under those contracts that establish a delivery point beyond the first index pricing point to which the gas flows. Moreover, those contracts must include gas attributable to one or more of the lessee's Indian leases in the index zone. Information provided on the forms may be used by MMS auditors, Valuation and Standards Division (VSD), and the Office of Indian Royalty Assistance.

MMS estimates the annual reporting burden to be approximately 37,400 hours. About 935 companies pay royalties on approximately 4,511 tribal and allotted Indian leases. MMS subject matter experts estimate that about 24 hours are required per report to extract from company records the data required at proposed 30 CFR 206.172 (e). They also estimate that about 20 percent of the companies have sales beyond the first index pricing point. Therefore, reports from about 187 companies (.20 × 935) for 8 index zones are required annually. Only a minimal recordkeeping burden would be imposed annually by this collection of information. Based upon $25 per hour, annual costs to industry is estimated to be $935,000.

In compliance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, MMS is providing notice and otherwise consulting with members of the public

and affected agencies concerning collection of information in order to solicit comment to: (a) Evaluate 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) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)) is not required.

List of Subjects in 30 CFR Parts 202 and 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: September 6, 1996.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, Parts 202 and 206 of Title 30 of the Code of Federal Regulations are proposed to be amended as follows:

PART 202—ROYALTIES

1. The authority citation for Part 202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

2. The heading for Subpart D—Federal and Indian Gas—is revised to read as follows:

Subpart D—Federal Gas

3. Section 202.51(b) is revised to read as follows:

* * * * *

(b) The definitions in subparts C, D, E, and I of part 206 of this title are applicable to subparts B, C, D, I, and J of this part.

4. Sections 202.150 (b)(1), (e)(1), and (e)(2) are amended by removing the words ''or Indian''.

5. Section 202.150 paragraph (f) introductory text is amended by removing the words ''and Indian,'' and paragraph (f)(3) by removing the words ''or Indian.''

6. Section 202.151(a)(2) is amended by removing the words ''and Indian.''

7. A new subpart J is added to read as follows:

Subpart J—Gas Production From Indian Leases

Sec.
202.550 How to determine the royalty due on gas production.
202.551 Standards for reporting and paying royalties on gas.

Subpart J—Gas Production From Indian Leases

§ 202.550 How to determine the royalty due on gas production.

This section explains how lessees and other royalty payors must determine and pay royalties on gas production from Indian leases subject to this subpart.

(a) *Royalty rate.* (1) You must calculate royalties due on gas production from Indian leases using the royalty rate in the lease. You must pay royalty in value unless the Tribal lessor, or the Secretary of the Department of the Interior (Secretary) for allottee leases, requires payment in kind. When paid in value, the royalty due is the value, for royalty purposes, determined under 30 CFR part 206 multiplied by the royalty rate in the lease.

(2) If you demonstrate economic hardship, you may request a royalty rate reduction which is subject to the approval of the Indian lessor and the Secretary.

(b) *Leases not in an approved Federal agreement (AFA).* You must pay royalty on your entitled share of gas production from your Indian lease, except as provided in paragraphs (d), (e), and (f) of this section. You may pay on your takes if you notify the Associate Director for Royalty Management in writing that all other persons paying royalties on the lease also agree to pay on their takes. If you pay royalties based on your takes that are less than your entitled share, you are still liable for the royalties on your entitled share if the person taking the production does not pay the royalties owed.

(c) *Leases in an approved Federal agreement (AFA).* (1) You must pay royalties on production allocated to your lease under the terms of an AFA in accordance with the following requirements:

(i) *Royalty rate*—You must pay royalties based on the royalty rate specified in the lease. The lessee and the Indian lessor may agree to amend the royalty rate in the lease with the Secretary's approval.

(ii) *Volume*—You must pay royalties each month on your entitled share of production allocated to your lease under the terms of an AFA. This may include production from more than one AFA.

(iii) *Value*—The value of production that you take must be determined under 30 CFR part 206. If you take more than your entitled share of production for any month, the value of your entitled share is the weighted-average value of the production, determined under 30 CFR part 206, that you take during that month.

(iv) The value of production that you are entitled to but do not take for any month must be determined as follows:

(A) Where you take only a portion of your entitled share of production from a lease in an AFA, value for the undertaken volumes must be based on the weighted average of the value of the production you do take for that month from the same lease in the same AFA as determined under 30 CFR part 206. You may apply this valuation method only if you take a significant volume of production. If you do not take a significant volume of production from your lease for a month, you must use paragraph (c)(1)(iv)(B) or (C)(*1*)–(*5*) of this section whichever is applicable.

(B) If you take none of your entitled share of production in an AFA and that production would have been valued using an index-based method under § 206.172(b) of this title had it been taken, then you must determine the value of production not taken for that month under § 206.172(b) of this title as if you had taken it.

(C) If you take none of your entitled share of production from a lease in an AFA and that production cannot be valued under § 202.550(c)(1)(iv)(B), then you must determine the value of production not taken for that month based on the first applicable method as follows:

(*1*) The weighted average of the value of your production (under 30 CFR Part 206) from other leases in the same AFA that month;

(*2*) The weighted average of the value of your production (under 30 CFR Part 206) from other leases in the same field or area that month;

(*3*) The weighted average of the value of your production (under 30 CFR Part 206) during the previous month for production from leases in the same AFA that month;

(*4*) The weighted average of the value of your production (under 30 CFR Part 206) during the previous month for production from other leases in the same field or area; or

(*5*) The latest major portion value you received from MMS calculated under 30 CFR 206.174 for the same MMS-designated area.

(2) If you take less than your entitled share of AFA production for any month, but you pay royalties on the full volume of your entitled share in accordance with the provisions of this section, you will owe no additional royalty for that lease for that month when you later take more than your entitled share to balance your account. This also applies when the other AFA participants pay you money to balance your account.

(d) *Gas subject to royalty.* (1) All gas produced from or allocated to your Indian lease is subject to royalty except:

(i) Gas that is unavoidably lost;

(ii) Gas that is used on, or for the benefit of, the lease;

(iii) Gas that is used off-lease for the benefit of the lease when the Bureau of Land Management (BLM) approves such off-lease use; and

(iv) Gas used as plant fuel as provided in 30 CFR 206.179(e).

(2) You may use royalty-free only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility when you use gas:

(i) On, or for the benefit of, the lease at a production facility handling production from more than one lease with BLM's approval; or

(ii) At a production facility handling unitized or communitized production.

(3) If the terms of your lease are inconsistent with this subpart, your lease terms will govern to the extent of that inconsistency.

(e) *Avoidably lost, wasted, or drained gas and compensatory royalty.* If BLM determines that a volume of gas was avoidably lost or wasted, or a volume of gas was drained from your Indian lease for which compensatory royalty is due, then you must determine the value of that volume of gas in accordance with 30 CFR part 206.

(f) *Insurance compensation.* If you receive insurance compensation for unavoidably lost gas, you must pay royalties on the amount of that compensation. This paragraph does not apply to compensation through self-insurance.

(v) Reporting and payment—You must report and pay royalties as provided in part 218 of this title.

§ 202.551 Standards for reporting and paying royalties on gas.

This section provides technical standards for reporting and paying royalties on gas produced from Indian leases.

(a)(1) You must determine gas volumes and Btu heating values, if applicable, under the same degree of water saturation. You must report gas volumes in units of one thousand cubic feet (Mcf), and Btu heating value must be reported at a rate of Btu's per cubic foot, at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60°F. You must report gas volumes and Btu heating values, for royalty purposes, on the same water vapor saturated or unsaturated basis that the Federal Energy Regulatory Commission (FERC) prescribes in its regulations. You may use the basis prescribed in your gas sales contract as long as the sales contract does not conflict with FERC's regulations.

(2) You must use the frequency and method of Btu measurement stated in your contract to determine Btu heating values for reporting purposes. However, you must measure the Btu value at least semi-annually by recognized standard industry testing methods even if your contract provides for less frequent measurement.

(b) Residue gas and gas plant product volumes must be reported as follows:

(1) You must report carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any gas marketed as a separate product by using the same standards specified in paragraph (a) of this section.

(2) You must report natural gas liquid (NGL) volumes in standard U.S. gallons (231 cubic inches) at 60°F.

(3) You must report sulfur (S) volumes in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

8. The authority citation for Part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

9. Subpart E of part 206 is revised to read as follows:

Subpart E—Indian Gas

Sec.
206.170 What this subpart applies to.
206.171 Definitions.
206.172 How to value gas produced from leases in an index zone.
206.173 Alternative methodology for dual accounting.
206.174 How to value gas production when an index-based method cannot be used.
206.175 How to determine quantities and qualities of production for computing royalties.
206.176 How to do accounting for comparison.
206.177 General provisions regarding transportation allowances.
206.178 How to determine a transportation allowance.
206.179 General provisions regarding processing allowances.
206.180 How to determine an actual processing allowance.
206.181 Processing allowances for use in certain dual accounting situations.

Subpart E—Indian Gas

§ 206.170 What this subpart applies to.

This subpart provides royalty valuation provisions applicable to Indian lessees.

(a) This subpart applies to all gas production from Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation). The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms. This subpart does not apply to Federal leases.

(b) If the specific provisions of any Federal statute, treaty, negotiated agreement, settlement agreement resulting from any administrative or judicial proceeding, or Indian oil and gas lease are inconsistent with any regulation in this subpart, then the Federal statute, treaty, negotiated agreement, settlement agreement, or lease will govern to the extent of that inconsistency.

(c) You may calculate the value of production for royalty purposes under methods other than those the regulations in this title require, but only if you, the tribal lessor, and MMS jointly agree to the valuation methodology. For leases that Indian allottees own, you and MMS must agree to the valuation methodology.

(d) All royalty payments you make to MMS are subject to monitoring, review, audit, and adjustment.

(e) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of

the governing mineral leasing laws, treaties, and lease terms.

§ 206.171 Definitions.

The following definitions apply to this subpart and to subpart J of part 202 of this title:

Accounting for comparison means the same as dual accounting.

Active spot market means a market where one or more MMS-acceptable publications publish bidweek prices (or if bidweek prices are not available, first of the month prices) for at least one index pricing point in the index zone.

Allowance means a deduction in determining value for royalty purposes. Processing allowance means an allowance for the reasonable actual costs of processing gas determined under this subpart. Transportation allowance means an allowance for the reasonable actual cost of transportation determined under this subpart.

Approved Federal agreement (*AFA*) means a unit or communitization agreement approved under Department of the Interior (DOI) regulations.

Area means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and/or legal characteristics. An area may encompass all lands within the boundaries of an Indian reservation.

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(1) Ownership in excess of 50 percent constitutes control;

(2) Ownership of 10 through 50 percent creates a presumption of control;

(3) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. MMS may require the lessee to certify the percentage of ownership or control of the entity. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other persons who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Compression means raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Dedicated means a contractual commitment to deliver gas production (or a specified portion of production) from a lease or well when that production is specified in a sales contract *and* that production must be sold pursuant to that contract to the extent that production occurs from that lease or well.

Drip condensate means any condensate recovered downstream of the facility measurement point without resorting to processing. Drip condensate includes condensate recovered as a result of its becoming a liquid during the transportation of the gas removed from the lease or recovered at the inlet of a gas processing plant by mechanical means, often referred to as scrubber condensate.

Dual Accounting (or *accounting for comparison*) refers to the requirement to pay royalty based on a value which is the higher of the value of gas prior to processing less any applicable allowances as compared to the combined value of drip condensate, residue gas, and gas plant products after processing, less applicable allowances.

Entitlement (or *entitled share*) means the gas production from a lease, or allocable to lease acreage under the terms of an AFA multiplied by the operating rights owner's percentage of interest ownership in the lease or the acreage.

Facility measurement point (or *point of royalty settlement*) means the point where the BLM-approved measurement device is located for determining the volume of gas removed from the lease. The facility measurement point may be on the lease or off-lease with BLM approval.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

Gas means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

Gathering means the movement of lease production to: a central accumulation and/or treatment point on the lease, unit, or communitized area; or a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM operations personnel.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, and gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest is exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through

reasonable efforts are also part of gross proceeds.

Index means the calculated composite price ($/MMBtu) of spot-market sales published by a publication that meets MMS- established criteria for acceptability at the index pricing point.

Index pricing point (IPP) means any point on a pipeline for which there is an index.

Index zone means a field or an area with an active spot market and published indices applicable to that field or area that are acceptable to MMS under § 206.172(d)(4) of this subpart.

Indian allottee means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Indian Tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context. For purposes of this subpart, this definition excludes Federal leases.

Lease products means any leased minerals attributable to, originating from, or allocated to a lease.

Lessee means any person to whom the United States, a Tribe, and/or individual Indian landowner issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality lease products means lease products which have similar chemical, physical, and legal characteristics.

Major portion means the lease term providing that the royalty value may be established considering the highest price paid or offered for the major portion of production in the field or area.

Marketable condition means lease products which are sufficiently free from impurities and otherwise in a condition that a purchaser will accept them under a sales contract typical for the field or area.

MMS means the Minerals Management Service, Department of the Interior. MMS includes, where appropriate, Tribal auditors acting under agreements under the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1701 *et seq.* or other applicable agreements.

Minimum royalty means that minimum amount of production royalty that the lessee must pay for the lease year as specified in the lease or in applicable leasing regulations.

Natural gas liquids (*NGL*'s) means those gas plant products consisting of ethane, propane, butane, and/or heavier liquid hydrocarbons.

Net-back method (or *work-back method*) means a method for calculating market value of gas at the lease. Under this method, costs of transportation, processing, and/or manufacturing are deducted from the proceeds received for, or the value of, the gas, residue gas, or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale under an arm's-length contract or comparison to other sales of such products.

Net output means the quantity of residue gas and each gas plant product that a processing plant produces.

Net profit share means the specified share of the net profit from production of oil and gas as provided in the agreement.

Operating rights owner (*working interest owner*) means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title. (See BLM regulations at 43 CFR 3100.0–5(d)).

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Point of royalty measurement means the same as facility measurement point.

Posted price means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the MMS Royalty Management Program Oil and Gas Payor Handbook.

Spot sales agreement means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration. It also does not normally require a cancellation notice to terminate, and does not contain an obligation, or imply an intent, to continue in subsequent periods.

Takes means when the operating rights owner sells or removes production from, or allocated to, the lease, or when such sale or removal occurs for the benefit of an operating rights owner.

Work-back method means the same as net-back method.

§ 206.172 How to value gas produced from leases in an index zone.

(a) *What leases this section applies to.* (1) This section explains how lessees must value, for royalty purposes, gas produced from Indian leases located in an index zone. For other leases, value must be determined under § 206.174 of this subpart, or as otherwise provided in the lease. You must use the valuation provision of this section if your lease is in an index zone and:

(i) Has a major portion provision, or

(ii) Does not have a major portion provision, but the lease provides for the Secretary to determine the value of production.

(2) This section does not apply to carbon dioxide, nitrogen, or other non-hydrocarbon components of the gas stream. However, if they are recovered and sold separately from the gas stream, the value for these products must be determined under § 206.174 of this subpart.

(b) *How to value residue gas and gas prior to processing.* (1) Except as provided in paragraph (e) of this section, this paragraph (b) explains how you must value:

(i) Gas production prior to processing;

(ii) Gas production that you certify on Form MMS–4410 is not processed

before it flows into a pipeline with an index but which may be processed later; and

(iii) Residue gas after processing.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the value of gas production which is not sold under dedicated contracts is the index-based value determined in paragraph (d) of this section.

(ii) If gas not sold under a dedicated contract was subject to a previous contract which was the subject of a gas contract settlement, then you must compare the index-based value determined in paragraph (d) of this section with the value of that gas under § 206.174. You must pay royalty on the higher of those two values.

(3) The value of gas production which is sold under dedicated contracts is the higher of the index-based value under paragraph (d) of this section or the value of that production determined under § 206.174 of this subpart.

(c) *How to value gas that is processed before it flows into a pipeline with an index.* Except as provided in paragraph (e) of this section, this paragraph (c) explains how you must value gas that is processed before it flows into a pipeline with an index. You must value such gas production based on the higher of:

(1) The value of the gas prior to processing determined under paragraph (b) of this section; or

(2) The value of the gas after processing, which is either the alternative dual accounting value under § 206.173 of this subpart or the sum of:

(i) The value of the residue gas determined under paragraph (b)(2) or (b)(3) of this section, as applicable; and

(ii) The value of the gas plant products determined under § 206.174 of this subpart, less any applicable processing allowances determined under this subpart; and

(iii) The value of any drip condensate associated with the processed gas determined under subpart B of this part.

(d) *How to determine the index-based value for gas production.* (1) To determine the index-based value per MMBtu for production from a lease in an index zone, you must:

(i) For each MMS-approved publication, calculate the average of the highest reported prices for all index pricing points in the index zone, except for any prices excluded under paragraph (d)(6) of this section;

(ii) Sum the averages calculated in paragraph (d)(1)(i) of this section and divide by the number of publications;

(iii) Reduce the number calculated under paragraph (d)(1)(ii) of this section by 10 percent, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu. The result is the index-based value per MMBtu for production from all leases in that index zone.

(2) MMS will publish in the Federal Register the index zones that are eligible for the index-based valuation method under this paragraph. MMS will monitor the market activity in the index zones and, if necessary, hold a technical conference to add or modify a particular index zone. Any change to the index zones will be published in the Federal Register. MMS will consider the following factors and conditions in determining eligible index zones:

(i) Areas for which MMS-approved publications establish index prices that accurately reflect the value of production in the field or area where the production occurs;

(ii) Common markets served;

(iii) Common pipeline systems;

(iv) Simplification; and

(v) Easy identification in MMS' systems, such as counties or Indian reservations.

(3) If market conditions change so that an index-based method for determining value is no longer appropriate for an index zone, MMS will hold a technical conference to consider disqualification of an index zone. MMS will publish notice in the Federal Register if an index zone is disqualified. If an index zone is disqualified, then production from leases in that index zone cannot be valued under this paragraph.

(4) MMS periodically will publish in the Federal Register a list of acceptable publications based on certain criteria, including, but not limited to:

(i) Publications buyers and sellers frequently use;

(ii) Publications frequently referenced in purchase or sales contracts;

(iii) Publications which use adequate survey techniques, including the gathering of information from a substantial number of sales;

(iv) Publications which publish the range of reported prices they use to calculate their index; and

(v) Publications independent from DOI, lessors, and lessees.

(5) Any publication may petition MMS to be added to the list of acceptable publications.

(6) MMS may exclude an individual index price for an index zone in an MMS-approved publication if MMS determines that the index price does not accurately reflect the value of production in that index zone. MMS will publish a list of excluded indices in the Federal Register.

(7) MMS will reference which tables in the publications you must use for determining the associated index prices.

(8) The index-based values determined under this paragraph are not subject to deductions for transportation or processing allowances determined under §§ 206.177, 206.178, 206.179, and 206.180 of this subpart.

(e) *How you determine the minimum value for royalty purposes.* (1) Notwithstanding any other provision of this section, the value for royalty purposes of gas production from an Indian lease subject to this section cannot be less than the value determined under this paragraph (e).

(2) By June 30 following any calendar year, you must calculate for each month of that calendar year your safety net price per MMBtu using the procedures in paragraph (e)(3) of this section. You must calculate a safety net price for each month and for each index zone where you have an Indian lease for which you report and pay royalties.

(3) Your safety net price for an index zone must be calculated as the volume weighted average contract price per delivered MMBtu under your arm's-length contracts for the disposition of residue gas or unprocessed gas from the same index zone (which, for purposes of this paragraph (e) only, includes gas from your Indian leases and Federal, State, and fee properties). Do not reduce the contract price for any transportation costs incurred to deliver the gas to the purchaser. You should include in your calculation only sales under those contracts that establish a delivery point beyond the first index pricing point to which the gas flows and that include any gas attributable to one or more of your Indian leases in the index zone. For purposes of paragraph (e) of this section only, the contract price will not include:

(i) Any amounts which you receive in compromise or settlement of a predecessor contract for that gas;

(ii) Adjustments for you or any other person to place gas production in marketable condition or to market the gas; or

(iii) Any amounts related to marketable securities associated with that sales contract.

(4)(i) Next, you must determine for each month the number that is 80 percent of the safety net price you calculated for an index zone under paragraph (e)(3) of this section. You also must calculate the number that equals 125 percent of the monthly index-based value. You must perform this calculation separately for each index zone. For any index zone, if the number you calculated as 80 percent of the safety net price exceeds the number you calculated as 125 percent of the index-based value, then you owe additional royalty on the safety net differential

determined under paragraph (e)(4)(ii) of this section.

(ii) To calculate the additional royalties you owe, multiply the safety net differential determined in paragraph (e)(4)(i) of this section by the volume of all your gas production from Indian leases in that index zone that was sold beyond the first index pricing point through which the gas flowed and that was used in the calculation in paragraph (e)(3) (''safety net production'').

(iii) Allocate the additional royalties determined under paragraph (e)(4)(ii) of this section to each Indian lease in the index zone with safety net production. For each Indian lease in the index zone with safety net production, allocate the additional royalties owed as follows:

$[(A)/(B)] \times (C)$

Where:

(A) Is volume (in MMBtu's) of safety net production from that Indian lease;

(B) Is volume (in MMBtu's) of safety net production from all your Indian leases in that index zone; and

(C) Is total additional royalties owed.

(5) You have the following responsibilities to comply with the minimum value for royalty purposes:

(i) You must report the safety net price for each index zone to MMS on Form MMS–4411 no later than June 30 following each calendar year.

(ii) You must pay and report on Form MMS–2014 additional royalties due no later than June 30 following each calendar year.

(iii) MMS has 1 year from the date it receives your Form MMS–4411 to order you to amend your safety net price calculation. If MMS does not order any amendments within the 1-year period, your safety net price calculation is final.

§ 206.173 Alternative methodology for dual accounting.

(a) *Election for a dual accounting method.* (1) If you are required to perform the accounting for comparison (dual accounting) under § 206.176 of this subpart, you have two choices. You may elect to perform the dual accounting calculation according to either § 206.176(a) of this subpart (called *actual dual accounting*), or paragraph (b) of this section (called the alternative methodology for dual accounting).

(2)(i) Your election to use the alternative methodology for dual accounting must be made separately for your Indian leases in each MMS-designated area. Your election for a designated area must apply to all of your Indian leases in that area. MMS will publish in the Federal Register a list of the leases that will be associated with each designated area for purposes of this section. The MMS-designated areas are:

(A) Alabama-Coushatta;

(B) Blackfeet Reservation;

(C) Crow Reservation;

(D) Fort Belknap Reservation;

(E) Fort Berthold Reservation;

(F) Fort Peck Reservation;

(G) Jicarilla Apache Reservation;

(H) MMS-designated groups of counties in the State of Oklahoma;

(I) Navajo Reservation;

(J) Northern Cheyenne Reservation;

(K) Rocky Boys Reservation

(L) Southern Ute Reservation;

(M) Turtle Mountain Reservation;

(N) Ute Mountain Ute Reservation;

(O) Uintah and Ouray Reservation;

(P) Wind River Reservation; and

(Q) Any other area that MMS designates. MMS will publish a new area designation in the Federal Register.

(ii) You may elect to begin using the alternative methodology for dual accounting at the beginning of any month. The first election to use the alternative methodology will be effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative methodology must remain in effect for 2 calendar years. You may return to the actual dual accounting method only at the beginning of the next election period or with the written approval of MMS and the Tribal lessor for Tribal leases, and MMS for Indian allottee leases in the designated area.

(iii) When you elect to use the alternative methodology, any new wells or newly-acquired leases commencing production in the designated area during the term of the election must use the alternative methodology.

(b) *How to calculate the alternative methodology for dual accounting.*

(1) The alternative methodology adjusts the value of gas prior to processing determined under either § 206.172 or § 206.174 of this subpart to provide an after-processing value. You must use the after-processing value for royalty payment purposes. The amount of the increase depends on your relationship with the owner(s) of the plant where the gas is processed. If you have no direct or indirect ownership interest in the processing plant, then the increase is lower. If you have a direct or indirect ownership interest in the plant where the gas is processed, the increase is higher.

(2)(i) To calculate the alternative methodology for dual accounting, you must apply the increase to the value prior to processing, determined in either § 206.172 or § 206.174 of this subpart, as follows:

Post-processing value = (value determined in either § 206.172 or § 206.174) × (1 + increment for dual accounting).

(ii) In this equation, the increment for dual accounting is the number you take from the applicable Btu range in the following table:

BTU range	Increment if lessee has no ownership interest in plant	Increment if lessee has an ownership interest in plant
1001 to 1050	.0275	.0375
1051 to 1100	.0400	.0625
1101 to 1150	.0425	.0750
1151 to 1200	.0700	.1225
1201 to 1250	.0975	.1700
1251 to 1300	.1175	.2050
1301 to 1350	.1400	.2400
1351 to 1400	.1450	.2500
1401 to 1450	.1500	.2600
1451 to 1500	.1550	.2700
1501 to 1550	.1600	.2800
1551 to 1600	.1650	.2900
1601 to 1650	.1850	.3225
1651 to 1700	.1950	.3425
1700+	.2000	.3550

(3) The applicable Btu for purposes of this section is the volume weighted-average Btu for the lease computed from measurements at the facility measurement point(s) for gas production from the lease.

(4) If you process any gas from the lease during a month and the weighted-average quality of the gas from the lease that month determined under paragraph (b)(3) of this section is:

(i) Greater than 1,000 Btu's per cubic foot (Btu/cf), all gas production from the lease is subject to dual accounting, and you must use the alternative method for all that gas production;

(ii) Less than or equal to 1,000 Btu/cf, only the volumes of lease production measured at facility measurement points whose quality exceeds 1,000 Btu/cf is subject to dual accounting, and you may use the alternative methodology for these volumes. For gas measured at facility measurement points for these leases where the quality is equal to or less than 1,000 Btu/cf, you are not required to do dual accounting.

§ 206.174 How to value gas production when an index-based method cannot be used.

(a)(1) This section applies to the valuation of gas production when your lease is not in an index zone and any other gas production that cannot be valued under § 206.172 of this subpart. It also applies to the valuation of gas from all Indian leases that is sold under a dedicated contract, to the valuation of gas plant products, and to components of the gas stream that have no Btu value

(for example, carbon dioxide, nitrogen, etc.). If your lease is in an index zone and you sell your gas under a dedicated contract, then the value of your gas is the higher of the value under this section or the value under § 206.172 of this subpart.

(2) The value of gas production, for royalty purposes, subject to this subpart is the value of gas determined under this section less applicable allowances determined under this subpart.

(3) You must determine the value of gas production that is processed and is subject to accounting for comparison using the procedure in § 206.176 of this subpart.

(4)(i) This paragraph applies if your lease has a major portion provision. It also applies if your lease does not have a major portion provision but the lease provides for the Secretary to determine value. The value of production you must initially report and pay is the value determined in accordance with the other paragraphs of this section. Within 90 days of each report month, MMS will determine the major portion value and notify you in writing of that value. The value of production for royalty purposes for your lease is the higher of either the value determined under this section which you initially used to report and pay royalties, or the major portion value calculated under this paragraph (a)(4). If the major portion value is higher, you must submit an amended Form MMS–2014 to MMS within 30 days of when you receive written notice from MMS of the major portion value. Late-payment interest under 30 CFR 218.54 on any underpayment will not begin to accrue until the date the amended Form MMS–2014 is due to MMS.

(ii) MMS will calculate the major portion value for each designated area (which are the same designated areas as under § 206.173 of this title) using values reported for unprocessed gas and residue gas on Form MMS–2014 for gas produced from leases on that Indian reservation or other designated area. MMS will array the reported prices from highest to lowest price. The major portion value is that price at which 25 percent (by volume) of the gas (starting from the highest) is sold. MMS cannot unilaterally change the major portion value after you are notified in writing of what that value is for your leases.

(b)(1)(i) The value of gas, residue gas, or any gas plant product you sell under an arm's-length contract is the gross proceeds accruing to you, except as provided in paragraphs (b)(1) (ii) and (iii) of this section. You have the burden of demonstrating that your contract is arm's-length.

(ii) In conducting reviews and audits for gas valued based upon gross proceeds under this paragraph, MMS will examine whether or not your contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you for the gas, residue gas, or gas plant product. If the contract does not reflect the total consideration, then MMS may require that the gas, residue gas, or gas plant product sold under that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to you, including the additional consideration.

(iii) If MMS determines for gas valued under this paragraph that the gross proceeds accruing to you under an arm's-length contract do not reflect the value of the gas, residue gas, or gas plant products because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then MMS will require that the gas, residue gas, or gas plant product be valued under paragraphs (c)(2) or (c)(3) of this section. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your value.

(2) MMS may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product.

(c) If your gas, residue gas, or any gas plant product is not sold under an arm's-length contract, then you must value the production using the first applicable method as follows:

(1) The gross proceeds accruing to you under your non-arm's-length contract sale (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). For residue gas or gas plant products, the comparable arm's-length contracts must be for gas from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors will be considered: Price, time of execution, duration, market or markets served, terms, quality of gas, residue gas, or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the gas, residue gas, or gas plant products; or

(2) A value determined by consideration of other information relevant in valuing like-quality gas, residue gas, or gas plant products, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, or for residue gas or gas plant products from the same gas plant or other nearby processing plants. Other factors to consider include posted prices for gas, residue gas, or gas plant products, prices received in spot sales of gas, residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of such gas, residue gas, or gas plant products; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to the determination of royalty value. Such data will be subject to review and audit, and MMS will direct you to use a different value if it determines upon review or audit that the value you reported is inconsistent with the requirements of these regulations.

(2) You must make certain data available upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other authorized persons. You must make available your arm's-length sales and volume data for like-quality gas, residue gas, and gas plant products that are sold, purchased, or otherwise obtained from the same processing plant or from nearby processing plants, or from the same or nearby field or area.

(e) If MMS determines that you have not properly determined value, you must pay the difference, if any, between royalty payments made based upon the value you used and the royalty payments that are due based upon the value MMS established. You also must pay interest computed on that difference under 30 CFR 218.54. If you are entitled to a credit, MMS will provide instructions how to take that credit.

(f) You may request a value determination from MMS. In that event, you must propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. You must submit all available data relevant to your proposal. MMS will quickly determine the value based upon your proposal and any additional

information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria this subpart authorizes. That determination will remain effective for the period stated therein. After MMS issues its determination, you must make the adjustments in accordance with paragraph (e) of this section. MMS will provide notice of its decision to the Indian Tribes for their Tribal leases.

(g)(1) For gas, residue gas, and gas plant products valued under this section, under no circumstances may the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for gas, residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined under this subpart.

(2) For gas plant products valued under this section and not valued under § 206.173, the alternative methodology for dual accounting, the minimum value of production for each gas plant product is:

(i)(A) For production from leases in Colorado in the San Juan Basin, New Mexico, and Texas, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Mont Belvieu minus 8.0 cents per gallon.

(B) For production in Arizona, in Colorado outside the San Juan Basin, Minnesota, Montana, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Conway minus 7.0 cents per gallon.

(ii) You may use any commercial price bulletin, but you must use the same bulletin for all of the calendar year. If the commercial price bulletin you are using stops publication, you may use a different commercial price bulletin for the remaining part of the calendar year.

(iii) If you use a commercial price bulletin that is published monthly, the monthly average minimum price is the bulletin's minimum price. If you use a commercial price bulletin that is published weekly, the monthly average minimum price is the arithmetic average of the bulletin's weekly minimum prices. If you use a commercial price bulletin that is published daily, the monthly average minimum price is the arithmetic average of the bulletin's minimum prices for each Wednesday in the month.

(h) You are required to place gas, residue gas and gas plant products in marketable condition at no cost to the Indian lessor unless otherwise provided in the lease agreement. When your gross proceeds establish the value under this section, that value must be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is your responsibility to place the gas, residue gas, or gas plant products in marketable condition.

(i) For gas, residue gas, and gas plant products valued under this section, value must be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if you fail to take proper or timely action to receive prices or benefits to which you are entitled, you must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments must be in writing and signed by all parties to an arm's-length contract. If you make timely application for a price increase or benefit allowed under your contract but the purchaser refuses, and you take reasonable measures, which are documented, to force purchaser compliance, you will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph is not intended to permit you to avoid your royalty payment obligation in situations where your purchaser fails to pay, in whole or in part, or timely, for a quantity of gas, residue gas, or gas plant product.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in an MMS redetermination of value under this section will be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation allowances and processing allowances, may be exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this subpart must be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

(l) Time limitations on adjustments and audits for certain Indian leases.

(1) If you determine the value of production under this section from leases in Montana and North Dakota, you have time limits to make adjustments to your reported royalty value. If you know of an adjustment that would result in additional royalty owed, you are required to report that adjustment and pay the additional royalty by the time limit established in this paragraph. MMS also has time limits to complete royalty audits for these leases only. There are exceptions to these time limits in paragraph (l)(2) of this section.

(i) If your royalty valuation does not include a non-arm's-length allowance under this subpart, you have until the last day of the 13th month following the production month to report any adjustments on Form MMS–2014. MMS must complete royalty audits timely and may not issue demands or orders or initiate other action to collect royalty underpayment for this production from the lessee after the last day of the 12th month following the last day to make adjustments.

(ii) If your royalty valuation includes a non-arm's-length allowance under this subpart, you have until the last day of the 9th month following the month you submit to MMS your actual transportation allowance report, or your actual processing allowance report, to report any adjustments on Form MMS–2014. MMS must complete royalty audits timely and may not issue demands or orders or initiate any other action to collect royalty underpayments for this production from the lessee after the last day of the 12th month after the last day to report adjustments.

(2) Exceptions to the time limits in paragraph (l)(1) of this section are:

(i) If you have a pending dispute with your purchaser, the time periods to make adjustments in paragraphs (l)(1)(i) and (l)(1)(ii) of this section will be extended for 6 months after your dispute is finally resolved. The time period to complete audits and issue demands or orders is correspondingly extended;

(ii) If you have a pending dispute with the person transporting or processing your gas production, the time periods to make adjustments in paragraphs (l)(1)(i) and (l)(1)(ii) of this section will be extended for 6 months after your dispute is finally resolved. The time period to complete audits and issue demands or orders is correspondingly extended;

(iii) If there is a written agreement between you and MMS or its delegee if applicable, the time period is extended for the period stated in the agreement;

(iv) If there is a pending regulatory proceeding by any agency with jurisdiction over sales prices for gas that

could affect the value of the gas, the time period to make adjustments in paragraphs (l)(1)(i) and (l)(1)(ii) of this section will be extended for 90 days after final resolution of the pending regulatory proceeding, including any period for judicial review. The time period to complete audits and issue demands or orders is correspondingly extended;

(v) If the lessee fails or refuses to provide records or information in its possession or control necessary to complete the audit, the time period to issue demands or orders will be extended for any time periods that MMS cannot obtain the records or information;

(vi) The time period in paragraphs (l)(1)(i) and (l)(1)(ii) of this section will not apply in situations involving fraud or intentional misrepresentation or concealment of a material fact for the purpose of evading a payment obligation.

(3) For purposes of this paragraph (l), demand or order means an order to pay a specific amount or an amount that the lessee easily may calculate. It also includes an order to perform a restructured accounting based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months. The order to perform a restructured accounting must specify the reasons and the factual bases for the order.

(4) If an audit discloses overpayments for any lease, the lessee may credit those overpayments against any underpayments due on that same lease.

§ 206.175 How to determine quantities and qualities of production for computing royalties.

(a) For unprocessed gas, you must pay royalties on the quantity and quality at the facility measurement point BLM either allowed or approved.

(b) For residue gas and gas plant products, you must pay royalties on your share of the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(c) If you have no ownership interest in the processing plant and you do not operate the plant, you may use the contract volume allocation to determine your share of plant products.

(d) If you have an ownership interest in the plant or you operate it, use the following procedure to determine the quantity of the residue gas and gas plant products attributable to you for royalty payment purposes:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which you must pay royalty is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease must be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of non-uniform content, the volumes of residue gas and gas plant products allocable to each lease are based on theoretical volumes of residue gas and gas plant products measured in the lease gas stream. You must calculate the portion of net plant output of residue gas and gas plant products attributable to each lease as follows:

(i) First, compute the theoretical volumes of residue gas and gas plant products by multiplying the lease volume of the gas stream by the tested residue gas content (mole percentage) or gas plant product (GPM) content of the gas stream.

(ii) Second, calculate the theoretical volume of residue gas and gas plant products delivered from all leases by summing the theoretical volumes of residue gas and gas plant products delivered from each lease.

(iii) Third, calculate the theoretical quantities of net plant output of residue gas and gas plant products attributable to each lease by multiplying the net plant output of residue gas and gas plant products by the ratio of the theoretical volume of residue gas and gas plant products delivered from all leases.

(4) You may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If MMS approves a different method, it will be applicable to all gas production from your Indian leases that is processed in the same plant.

(e) You may not take any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas incurred prior to the facility measurement point will not be subject to royalty if BLM determines that the loss was unavoidable.

§ 206.176 How to do accounting for comparison.

(a) This section applies if you process your Indian lease gas and that Indian lease requires accounting for comparison (also referred to as actual dual accounting). Except as provided in paragraphs (b) and (c) of this section, the actual dual accounting value, for royalty purposes, is the greater of:

(1) The combined value of:

(i) The residue gas and gas plant products resulting from processing the gas determined under either § 206.172 or § 206.174 of this subpart, including any applicable allowances; and

(ii) Any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement without resorting to processing determined under § 206.174 of this subpart, including applicable allowances; or

(2) the value of the gas prior to processing determined under either § 206.172 or § 206.174 of this subpart, including any applicable allowances.

(b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 206.173 of this subpart instead of the provisions in paragraph (a) of this section.

(c) Accounting for comparison is not required for gas if no gas from the lease is processed until after the gas flows into a pipeline with an index located in an index zone. If you do not perform dual accounting, you must certify to MMS that gas flows into such a pipeline before it is processed.

(d) Except as provided in paragraph (e) of this section, if you value any gas production from a lease for a month using the dual accounting provisions of this section (including § 206.173 of this subpart), then the value of that gas is the minimum value for any other gas production from that lease for that month flowing through the same facility measurement point.

(e) If the weighted average Btu quality for your lease is less than 1,000 Btu's per cubic foot, see § 206.173(b)(4)(ii) to determine if you must perform a dual accounting calculation.

§ 206.177 General provisions regarding transportation allowances.

(a) When you value gas under § 206.174 of this subpart at a point off the lease (for example, sales point or point of value determination), you may deduct from value a transportation allowance to reflect the value, for royalty purposes, at the lease. The allowance is based on the reasonable actual costs you incurred to transport unprocessed gas, residue gas, or gas plant products from a lease to a point off the lease. This would include, if appropriate, transportation from the lease to a gas processing plant off the

lease and from the plant to a point away from the plant. You may not deduct any allowance for gathering costs.

(b) You must allocate transportation costs among all products you produce and transport as provided in § 206.178 of this subpart.

(c)(1) Except as provided in paragraph (c)(2) of this section, your transportation allowance deduction for each selling arrangement must not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant product. For purposes of this section, natural gas liquids are considered one product.

(2) If you ask MMS, it may approve a transportation allowance deduction in excess of the limitations in paragraph (c)(1) of this section. To receive this approval, you must demonstrate that the transportation costs incurred in excess of the limitations in paragraph (c)(1) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. Under no circumstances may an allowance reduce the value for royalty purposes under any selling arrangement to zero.

(d) If MMS conducts a review and/or audit and determines that you have improperly determined a transportation allowance authorized by this subpart, then you will be required to pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.54. Alternatively, you may be entitled to a credit, but you will not receive any interest on your overpayment.

§ 206.178 How to determine a transportation allowance.

(a) If you have an arm's-length transportation contract, the provisions of this section explain how to determine your allowance.

(1)(i) If you have an arm's-length contract for transportation of your production, the transportation allowance is the reasonable, actual costs you incur for transporting the unprocessed gas, residue gas and/or gas plant products under that contract. Paragraphs (a)(1)(ii) and (a)(1)(iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. Your allowances also are subject to paragraph (f) of this section. You are required to submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your report which claims the allowance on the Form MMS–2014.

(ii) When either MMS or a Tribe conducts reviews and audits, they will examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from you to the transporter for the transportation. If the contract reflects more than the total consideration, then MMS may require that the transportation allowance be determined under paragraph (b) of this section.

(iii) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then MMS will require that the transportation allowance be determined under paragraph (b) of this section. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your transportation costs.

(2)(i) If your arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs must be allocated in a consistent and equitable manner to each of the products transported. To make this allocation, use the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, you cannot take an allowance for the costs of transporting lease production which is not royalty bearing without MMS approval, or without lessor approval on Tribal leases.

(ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported. MMS will approve the method if it determines that:

(A) the methodology in paragraph (a)(2)(i) of this section cannot be applied; or

(B) your proposal is more reasonable than the methodology in paragraph (a)(2)(i) of this section.

(3)(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to MMS. You may use the transportation allowance determined in accordance with your proposed allocation procedure until MMS decides whether to accept your cost allocation.

(ii) You are required to submit all relevant data to support your allocation proposal. MMS will then determine the gas transportation allowance based upon your proposal and any additional information MMS deems necessary.

(4) If your payments for transportation under an arm's-length contract are not based on a dollar per unit, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a reduction for a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. You may use the transportation factor to determine your gross proceeds for the sale of the product. However, the transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(b) *How to determine a transportation allowance if you have a non-arm's-length or no contract.* (1)(i) This paragraph applies where you have a non-arm's-length transportation contract or no contract, including those situations where you perform transportation services for yourself. In these circumstances, the transportation allowance is based upon your reasonable, allowable, actual costs for transportation as provided in this paragraph.

(ii) All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4295 within 3 months after the end of the 12-month period to which the allowance applies. However, MMS may approve a longer time period. MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may require you to modify your actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations is based upon your actual costs for transportation during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A)

of this section), or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which you can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without MMS approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit of production method. Once you make an election, you may not change methods without MMS approval. A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for purposes of the allowance calculation. With or without a change in ownership, a transportation system may be depreciated only once. Equipment may not be depreciated below a reasonable salvage value. To compute a return on undepreciated capital investment, you will multiply the undepreciated capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you will multiply the initial capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the reporting period for which the allowance is applicable and is effective during the reporting period. The rate must be redetermined at the beginning of each subsequent transportation allowance reporting period which is determined under paragraph (4) of this section.

(3)(i) The deduction for transportation costs must be determined based on your cost of transporting each product through each individual transportation system. If you transport more than one product in a gaseous phase, the allocation of costs to each of the products transported must be made in a consistent and equitable manner. The allocation should be the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, you may not take an allowance for transporting a product which is not royalty bearing without MMS approval.

(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported. MMS will approve the method upon determining that:

(A) The methodology in paragraph (b)(3)(i) of this section cannot be applied; or

(B) Your proposal is more reasonable than the method in paragraph (b)(3)(i) of this section.

(4) Your transportation allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.

(5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS. You may use the transportation allowance determined in accordance with your proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. You are required to submit all relevant data to support your proposal. MMS will then determine the transportation allowance based upon your proposal and any additional information MMS deems necessary.

(c) *Alternative transportation calculation.* (1) As an alternative to computing your transportation allowance under paragraph (b) of this section, you may use as the transportation allowance 10 percent of your gross proceeds but not to exceed 30 cents per MMBtu.

(2) Your election to use the alternative transportation allowance calculation in paragraph (c)(1) of this section must be made at the beginning of a month and must remain in effect for an entire calendar year. When you first make the election, it will remain in effect until the end of the succeeding calendar year, except for elections effective January 1 which will be effective only for that calendar year.

(d) *Reporting requirements.* (1) If MMS requests, you must submit all data used to determine your transportation allowance. The data must be provided within a reasonable period of time that MMS will determine.

(2) You must report transportation allowances as a separate item on Form MMS–2014. MMS may approve a different reporting procedure on allottee leases, and with lessor approval on Tribal leases.

(e) *Interest assessments if you claim a transportation allowance that is too large.* (1) If you report a transportation allowance which results in an underpayment of royalties, you must pay late-payment interest on the amount of that underpayment.

(2) The interest you are required to pay will be determined under 30 CFR 218.54.

(f) *Adjustments.* If for any month the actual transportation allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to report and pay additional royalties due plus interest computed under 30 CFR 218.54, retroactive to the first day of the first month you deducted the improper transportation allowance. If the actual transportation allowance you are entitled to is greater than the amount you took on Form MMS–2014 for any royalties during the reporting period, you are entitled to a credit. No interest will be paid on the overpayment.

(g) *Actual or theoretical losses.* If you are paying any specifically identifiable actual or theoretical losses as part of your arm's-length transportation contract, you may deduct those costs. In all other circumstances you may not deduct those costs.

(h) *Other transportation cost determinations.* You must follow the

provisions of this section to determine transportation costs when establishing value using either a net-back valuation procedure or any other procedure that allows deduction of actual transportation costs.

§ 206.179 General provisions regarding processing allowances.

(a) When you value any gas plant product under § 206.174 of this subpart, you may deduct from value the reasonable actual costs of processing.

(b) You must allocate processing costs among the gas plant products. You must determine a separate processing allowance for each gas plant product and processing plant relationship. Natural gas liquids are considered as one product.

(c) The processing allowance deduction based on an individual product may not exceed 66⅔ percent of the value of each gas plant product determined under § 206.174 of this subpart. Before you calculate the 66⅔ percent limit, you must first reduce the value for any transportation allowances related to post-processing transportation authorized under § 206.177 of this subpart.

(d) Processing cost deductions will not be allowed for placing lease products in marketable condition. These costs include among others, dehydration, separation, compression upstream of the facility measurement point, or storage, even if those functions are performed off the lease or at a processing plant. Costs for the removal of acid gases, commonly referred to as sweetening, are not allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, you will be eligible for a processing allowance determined under this subpart. However, MMS will not grant any processing allowance for processing lease production which is not royalty bearing.

(e) You will be allowed a reasonable amount of residue gas royalty free for operation of the processing plant, but no allowance will be made for expenses incidental to marketing, except as provided in 30 CFR part 206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of your residue gas necessary for the operation of the processing plant will be allowed royalty free.

(f) You do not owe royalty on residue gas, or any gas plant product resulting from processing gas, which is reinjected into a reservoir within the same lease, or agreement, until such time as those products are finally produced from the reservoir for sale or other disposition off-lease. This paragraph applies only when the reinjection is included in a BLM-approved plan of development or operations.

(g) If MMS determines that you have determined an improper processing allowance authorized by this subpart, then you will be required to pay any additional royalties plus late-payment interest determined under 30 CFR 218.54. Alternatively, you may be entitled to a credit, but you will not receive any interest on your overpayment.

§ 206.180 How to determine an actual processing allowance.

(a) *How to determine a processing allowance if you have an arms's-length processing contract.* The provisions of this paragraph explain how you determine an allowance under an arm's-length processing contract.

(1)(i) The processing allowance is the reasonable actual costs you incur to process the gas under that contract. Paragraphs (a)(1)(ii) and (a)(1)(iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. You are required to submit to MMS a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your first report which deducts the allowance on the Form MMS–2014.

(ii) When it conducts reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from you to the processor for the processing. If the contract reflects more than the total consideration, then MMS may require that the processing allowance be determined under paragraph (b) of this section.

(iii) If MMS determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then MMS will require that the processing allowance be determined under paragraph (b) of this section. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your processing costs.

(2) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product must be determined in accordance with the contract. You cannot take an allowance for the costs of processing lease production which is not royalty-bearing.

(3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS. You may use your proposed allocation procedure until MMS issues its determination. You are required to submit all relevant data to support your proposal. MMS will then determine the processing allowance based upon your proposal and any additional information MMS deems necessary. You cannot take a processing allowance for the costs of processing lease production which is not royalty-bearing.

(4) If your payments for processing under an arm's-length contract are not based on a dollar per unit, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *How to determine a processing allowance if you have a non-arm's-length or no contract.* (1)(i) This paragraph applies if you have a non-arm's-length processing contract or have no contract, including those situations where you perform processing for yourself. In these circumstances the processing allowance is based upon your reasonable actual costs for processing as provided in paragraph (b) of this section.

(ii) All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to MMS on Form MMS–4109 within 3 months after the end of the 12-month period for which the allowance applies. MMS may approve a longer time period. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may require you to modify your actual processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations is based upon your actual costs for processing during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A) of this section), or a cost equal to the

initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. After you elect to use either method for a processing plant, you may not later elect to change to the other alternative without MMS approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. Once you make an election, you may not change methods without MMS approval. A change in ownership of a processing plant will not alter the depreciation schedule that the original processor/lessee established for purposes of the allowance calculation. However, for processing plants you or your affiliate purchase that do not have a previously claimed MMS depreciation schedule, you may treat the processing plant as a newly installed facility for depreciation purposes. With or without a change in ownership, a processing plant may be depreciated only once. Equipment may not be depreciated below a reasonable salvage value. To compute a return on undepreciated capital investment, you will multiply the undepreciable capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you will multiply the initial capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to plants first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.

(4) The processing allowance for each gas plant product must be determined based on your reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant product upon generally accepted accounting principles. You can not take an allowance for the costs of processing lease production which is not royalty-bearing.

(c) *Reporting.*

(1) If MMS requests, you must submit all data used to determine your processing allowance. The data must be provided within a reasonable period of time, as MMS determines.

(2) You must report gas processing allowances as a separate item on the Form MMS–2014. MMS may approve a different reporting procedure for allottee leases, and with lessor approval on Tribal leases.

(d) *Interest assessments if you claim a processing allowance that is too large.* (1) If you report a processing allowance which results in an underpayment of royalties, you must pay interest on the amount of that underpayment.

(2) The interest you are required to pay will be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If for any month the actual gas processing allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to pay additional royalties plus interest computed under 30 CFR 218.54, retroactive to the first day of the first month you deducted a processing allowance. If the actual processing allowance you are entitled is greater than the amount you took on Form MMS–2014, you are entitled to a credit. However, no interest will be paid on the overpayment.

(f) *Other processing cost determinations.* You must follow the provisions of this section to determine processing costs when establishing value using either a net-back valuation procedure or any other procedure that requires deduction of actual processing costs.

§ 206.181 Processing allowances for use in certain dual accounting situations.

(a) Where accounting for comparison (dual accounting) is required for gas production from a lease but you or someone on your behalf does not process the gas, and you have elected to perform actual dual accounting under § 206.176 of this subpart, you must use the first applicable method as follows to establish processing costs for dual accounting purposes:

(1) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that some gas has previously been processed under these agreements; or

(2) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that the agreements are in effect for plants to which the lease is physically connected and under which gas from other leases in the field or area is being or has been processed; or

(3) A proposed comparable processing fee submitted to either the Tribe and MMS (for tribal leases) or MMS (for allotted leases) with your supporting documentation submitted to MMS. If MMS does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the MMS Director under 30 CFR part 290; or

(4) Processing costs based on the regulations in § 206.179 and § 206.180 of this subpart.

Note: Forms are published for comments only and will not be codified in the CFR.

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OMB 1010-
Expires

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected to aid the Minerals Management Service in its compliance efforts. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

CERTIFICATION FOR NOT PERFORMING ACCOUNTING FOR COMPARISON (DUAL ACCOUNTING)

PAYOR'S NAME _____

ADDRESS _____

CITY/STATE _____ ZIP _____

PAYOR CODE |_|_|_|_|_|

LEASE NUMBER _____

DUAL ACCOUNTING IS NOT REQUIRED BECAUSE: (PLEASE SIGN AND DATE)

I certify that gas produced from this property is not processed before entering a pipeline with an index located in an index zone.

Authorized Official _____ Date _____

FORM MMS-4410 (8/96)

OMB 1010-
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The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected to aid the Minerals Management Service in its compliance efforts. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SAFETY NET REPORT

PAYOR'S NAME _____

ADDRESS _____

CITY/STATE _____ ZIP _____

PAYOR CODE |_|_|_|_|_|

REVIEW PERIOD: _____

NAME OF INDEX ZONE: _____

MONTH	SAFETY NET PRICE (volume weighted average price per MMBtu)	INDEX VALUE ($/MMBtu)	SAFETY NET DIFFERENTIAL* ($/MMBtu)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

* Please refer to 30 CFR § 206.172 (e) (4) (i) for instructions on how to calculate the safety net differential.

Prepared By: _____ Phone No. _____ Date _____

FORM MMS-4411 (8/96)

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federal register

Monday
September 23, 1996

Part VI

Department of Health and Human Services

Public Health Service

Draft Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

[Docket No. 96M–0311]

Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation (August 1996)

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing a document entitled, ''Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation (August 1996).'' The demand for human cells, tissues, and organs for clinical transplantation continues to exceed the supply. Thus, the development of xenotransplantation, an investigational therapeutic approach that uses cells, tissues, and organs of animal origin (xenografts) in human recipients, has become an important area of research. The purpose of this draft guideline is to discuss public health issues related to xenotransplantation and recommend procedures to diminish the risk of transmission of infectious agents to the recipient and the general public.

DATES: Written comments December 23, 1996.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration (FDA), 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guideline and received comments are available for public examination in the Documents Management Branch between 9 a.m. and 4 p.m., Monday through Friday. The draft guideline is set forth in this document. Submit written requests for single copies of the draft guideline to the Manufacturers Assistance and Communications Staff (HFM–42), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request. The document may also be obtained by mail or FAX by calling the CBER FAX Information System at 1–888–CBER–FAX or 301–827–3844.

Persons with access to the INTERNET may obtain the guidance document using FTP, the World Wide Web (WWW), or bounce-back e-mail. For FTP access, connect to CBER at ''ftp://ftp.fda.gov/ CBER/''. For WWW access, connect to CBER at ''http://www.fda.gov / cber/cberftp.html''. For bounce back e-mail send a message to ''Xeno@al.cber.fda.gov''.

FOR FURTHER INFORMATION CONTACT: Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200 North, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: For the purposes of this draft guideline, the germ ''xenotransplantation'' refers to any procedure that involves the use of live cells, tissues, and organs from a nonhuman animal source, transplanted or implanted into a human or used for ex vivo perfusion. These live nonhuman cells, tissues, or organs are called xenografts. Xenograft products include those from transgenic or nontransgenic animals, as well as combination products that contain xenografts in combination with drugs or devices. Xenograft products do not include nonliving animal products, many of which are regulated as devices (porcine heart valves), drugs (porcine insulin), and other biologicals (bovine serum albumin).

As with human transplantation, rejection and failure to engraft remain important medical and scientific challenges in xenotransplantation. In addition, there are concerns about potential infectious disease and public health risks. Diseases of animals can be transmitted to humans through routine exposure to, or consumption of, animals. Because transplantation bypasses most of the patient's usual protective physical and immunological barriers, transmission of known and/or unknown infectious agents to humans through xenografts may be facilitated. Moreover, infectious agents vary considerably from one to another with respect to the nature of the risks they present and the difficulty of managing those risks. For example, some agents, such as retroviruses and prions, may not produce clinically recognizable disease until many years after they enter the host, and some infectious agents are not readily detected or identified in tissue samples by current diagnostic techniques.

Despite the technical barriers and potential risks, xenotransplantation shows promise both as a treatment for a wide range of diseases including chronic metabolic and neurological disorders and as an alternative source of cells, tissues, and organs for clinical transplantation. For these reasons, academic and commercial sponsors are actively pursuing the development of xenograft products and their clinical application. The Health Resources and Services Administration (HRSA) and the Health Care Financing Administration (HCFA) within the Department of Health and Human Services (DHHS) currently administer programs overseeing human organ transplantation under the authority of the National Organ Transplant Act of 1984 (NOTA) (42 U.S.C. 273 *et seq.*, as amended). In the Federal Register of May 2, 1996 (61 FR 19722), DHHS published final rules governing performance standards for organ procurement organizations. FDA currently regulates human somatic cell therapies (see ''Application of Current Statutory Authorities to Human Somatic Cell Therapy Products and Gene Therapy Products,'' (58 FR 53248, October 14, 1993)) and human tissue for transplantation (21 CFR part 1270).

The public health safety issues raised by xenotransplantation differ from those of human transplantation in several significant ways. First, the spectrum of infectious agents transmitted via human organ transplantation has been well established, while the full spectrum of infectious agents potentially transmitted via xenograft transplantation is not well known. Infectious agents that produce minimal symptoms in animals may cause severe morbidity and mortality in humans. Second, HRSA oversight and administration of the human organ donor and recipient matching and tracking creates a system that ensures that high standards are maintained in human organ transplantation. Animals are currently commercially bred and raised as a source of food and other products; animals can also be bred and raised as sources of xenograft products for clinical transplantation. As the commercialization of xenograft production increases throughout the United States and the world, the need for consistent standards of source animal screening and quality control will grow. Third, the potentially unlimited supply of animal cells, tissues, and organs may allow opportunities for developing therapeutic approaches to a wide range of diseases for which treatments have heretofore been limited by the insufficient availability of human organs and tissues.

I. Regulation of Xenotransplantation Clinical Investigations

A number of experimental clinical investigations that use xenograft products are being carried out under FDA oversight using the investigational new drug application (IND). Examples of these clinical trials include using

fetal porcine neural cells for Parkinson's disease, encapsulated bovine adrenal cells for intractable pain, encapsulated porcine islet cells for diabetes, baboon bone marrow for AIDS and transgenic porcine livers as a temporary bridge to human organ transplantation.

The clinical investigation of drugs and biological products, including xenograft products (live animal cells, tissues, and whole organs), is subject to investigational new drug regulations in 21 CFR part 312, institutional review board regulations in 21 CFR part 56, and informed consent regulations in 21 CFR part 50. FDA plans to develop further guidance, that will be announced in the Federal Register, to assist sponsors in submitting to FDA the appropriate information to be included in an IND for clinical investigation of xenograft products.

II. Recent Events

In 1994 several Institutional Review Board (IRB) committees contacted the Centers for Disease Control and Prevention (CDC) and FDA regarding proposed solid organ xenotransplants from nontransgenic animals, and expressed concern regarding the source and characterization of donor animal tissues. Contemporaneously, the Assistant Secretary of Health requested that agencies in PHS develop a consensus on the infectious disease risks and safety issues raised by xenotransplantation. Even though there were well documented examples of trans-species infection of humans through routine animal exposure, no guidelines existed regarding the adequate screening of donor animal cells, tissues, and organs intended for human transplant or recommendations for post-transplantation patient monitoring.

To strike a balance between the public health risks and the potential promise of xenotransplantation, FDA, CDC, and the National Institutes of Health (NIH) have worked together to create a draft PHS guideline that seeks to address the concerns raised by the clinical use of xenograft products in humans. As part of the development of the guideline, FDA held an open public meeting of the Biologics Response Modifiers Advisory Committee (BRMAC) on April 21, 1995, at which elements of the draft xenotransplantation guideline and proposed clinical trials were discussed (see 60 FR 15147, March 22, 1995). Essential elements of the draft PHS guideline and a novel clinical trial to use baboon bone marrow for a patient with AIDS were also discussed at the July 13, 1995 meeting of the BRMAC (see 60 FR 32330, June 21, 1995). The PHS agencies including, FDA, CDC, NIH, and HRSA have discussed the development of the draft PHS guideline on infectious disease issues in xenotransplantation at numerous scientific meetings and public forums, and PHS scientists have authored scientific and lay reports on the subject of xenotransplantation.

FDA, CDC, NIH, and HRSA also supported a study and public workshop by the Institute of Medicine (IOM) on the scientific, public health, and ethical implications of xenotransplantation which culminated in a report released on July 17, 1996, entitled, ''Xenotransplantation: Science, Ethics, and Public Policy'' (hereinafter referred to as the IOM report). In addition to exploring some of the social, scientific, and ethical concerns associated with xenotransplantation, the IOM report also recommended that national guidelines be established for all experimenters and institutions that undertake xenotransplantation trials in humans. (Copies of the IOM report can be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–3313 or 800–624–6242.)

III. Submission of Comments

It is the intention of PHS to revise the draft guideline based on the comments received and to issue a revised guideline at a later date. The availability of any revised guideline will be announced in the Federal Register, the *NIH Guide for Grants and Contracts*, and CDC's *Morbidity and Mortality Weekly Report*. As with other guidelines, PHS does not intend this draft guideline to be all-inclusive and cautions that not all information contained therein may be applicable to all situations. The draft guideline is intended to provide information and does not set forth requirements. The methods and procedures cited in the draft guideline are suggestions.

PHS recognizes that advances will continue in the area of xenotransplantation and that this document may require revision as those advances occur. This draft guideline does not bind PHS and does not create or confer any rights for or on any person and does not operate to bind PHS or the public. The draft guideline represents PHS's current thinking on infectious disease issues in xenotransplantation. In addition, the issuance of this draft guideline by PHS should not be construed as an endorsement of the readiness of xenotransplantation clinical trials or a commitment to direct funds to support additional basic or preclinical research in this area.

Interested persons may submit written comments regarding this draft PHS guideline at any time to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received will be considered in any revision to the ''Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation (August 1996).''

The text of the draft guideline follows.

Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation (August 1996)

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1. Introduction

1.1. Background

The demand for human cells, tissues, and organs for clinical transplantation continues to exceed the supply. The resultant limited availability of human allografts, coupled with recent scientific and biotechnical advances, has prompted the development of new investigational therapeutic approaches that use cells, tissues, and organs of animal origin (xenografts) in human recipients. Transmission of infections (HIV/AIDS, Creutzfeldt-Jakob Disease, rabies, hepatitis B, hepatitis C, etc.) via transplanted human allografts has been well documented. The use of live

animal cells, tissues, and organs for transplantation or hemoperfusion of humans raised unique public health concerns about potential infection of the patient with both recognized and/or unknown infectious agents. Additionally, subsequent introduction of these xenogeneic infectious agents into and propagation through the general human population is a risk that must be addressed.

Zoonoses are defined as diseases of animals transmitted to humans via routine exposure to or consumption of the source animal. Many agents responsible for zoonoses are well characterized and identifiable through available diagnostic tests, e.g., Toxoplasma species, Salmonella species, or Herpes B virus of monkeys. However, public health concerns exist regarding the potential transmission of xenogeneic infectious agents not recognized as classical zoonoses from xenografts to recipients, and then from the recipient to other persons. The intimate contact between the recipient and the xenograft, the associated disruption of anatomical barriers, and immunosuppression of the recipient are more likely to facilitate interspecies transmission of xenogeneic infectious agents than normal contact between humans and animals.

Emerging infectious agents may not be readily identifiable with current techniques, as exemplified by the delay of several years in identifying HIV–1 as the pathogenic agent for AIDS. Improvement in diagnostic techniques facilitated investigation of exogenous and endogenous retroviruses in all species. Retroviruses and other persistent viral infections may be associated with acute disease with varying incubation periods, followed by periods of clinical latency prior to the onset of clinically evident malignancies or other chronic diseases. As the HIV/AIDS pandemic demonstrates, persistent viral infections may result in person to person transmission for many years before clinical disease develops in the index case, thereby allowing an emerging infectious agent to become established in the susceptible population before it is recognized.

1.2. Scope of the Document

The draft guideline discusses public health issues related to xenotransplantation and recommends procedures for diminishing the risk of transmission of infectious agents to the recipient, health care workers, and the general public. This draft guideline applies to all xenotransplantation procedures performed in the United States. For the purposes of this draft guideline, the term ''xenotransplantation'' refers to any procedure that involves the use of live cells, tissues and organs from a non-human animal source, transplanted or implanted into a human or used for ex vivo perfusion. This draft guideline reflects the status of the field of xenotransplantation and knowledge of the risk of xenogeneic infections at the time of publication. This draft guidelines will require periodic review and may require modification when justified by advances in scientific knowledge and clinical experience.

1.3. Objectives

The objective of this draft Public Health Service (PHS) guideline is to present measures that can be used to minimize the risk to the public of human disease due to known zoonoses and emerging xenogeneic infectious agents arising from xenotransplantation. In order to achieve this goal, this document:

1.3.1. Outlines the composition and function of the xenotransplant team in order that appropriate technical expertise can be applied and that adequate data management, tissue storage, and surveillance procedures can be established.

1.3.2. Discusses aspects of the clinical protocol, clinical center and the informed consent relevant to public health concerns regarding infections associated with xenotransplantation.

1.3.3. Provides a framework for pretransplantation animal source screening to minimize the potential for cross-species transmission of known and unknown zoonotic agents.

1.3.4. Recommends approaches for postxenotransplantation surveillance to monitor for the potential transmission to the recipient and health care workers of infectious agents, including unlikely or previously unrecognized agents.

1.3.5. Recommends hospital infection control practices to reduce the risk of nosocomial transmission of xenogeneic infectious agents.

1.3.6. Recommends the archiving of biologic samples, (including sera, plasma, leukocytes, and tissues), from the source animal and the transplant recipient for the potential investigation of infectious diseases arising from xenotransplantation which could impact upon the public health.

1.3.7. Recommends the creation of a centralized database. This database will address the need for long term safety data required for public health investigations.

2. Xenotransplantation Protocol Issues

2.1. Xenotransplant Team

The transplantation of animal cells, tissues, and organs requires expertise in the evaluation of infectious agents in the source animal and in the recipient. Consequently, in addition to transplant surgeons, the xenotransplantation team should include as active participants such individuals as: (1) Infectious disease physician with expertise in zoonoses, transplantation, and microbiology; (2) veterinarian with specific expertise in the animal husbandry issues and infectious diseases (particularly zoonoses) of the animal species serving as the source of transplanted cells, tissues or organs (animal source); (3) transplant immunologist; (4) hospital epidemiologist/infection control specialist; and (5) director of the clinical microbiology laboratory.

2.2. Clinical Xenotransplantation Site

All clinical centers involved with xenotransplantation should have active participation with accredited virology and microbiology laboratories that have the documented expertise and capability to isolate and identify unusual and unknown pathogens of both human and veterinary origin. Centers where solid organ xenotransplantation procedures are performed should be members of the Organ Procurement and Transplantation Network and abide by its policies in accordance with Section 1138 of the Social Security Act (42 U.S.C. 13206–13208).

2.3. Clinical Protocol Review

After completion of internal review by all members of the xenotransplant team, clinical protocols should be reviewed by the clinical center Biosafety Committee, Institutional Animal Care and Use Committee (IACUC), and Institutional Review Board (IRB). The Biosafety Committee should have the expertise to assess the potential risks of infection for contact population (including health care providers, family, friends, and the community at large) and the recipient. The IACUC should have the expertise to evaluate epidemiological concerns related to conditions of source animal husbandry (e.g., frequency of screening, animal quarantine, etc.). The IRB should have expertise in human and veterinary infectious diseases, including virology and laboratory diagnostics, epidemiology, and risk assessment. The review committees should discuss their comments and suggestions with the members of the health care team and the informed consent document should

incorporate and reflect these comments, as needed. In addition, live animal cells, tissues, and organs intended for use in humans are subject to regulation by FDA under the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act (42 U.S.C. 262, 264 and 21 U.S.C. 301 *et seq.*).

2.4. Health Surveillance Plans

The clinical protocols for xenotransplantation should describe the methodologies for screening for known infectious agents before transplantation (including the herd, the individual animal and the xenograft) and surveillance after transplantation (including the recipient(s), their contacts, and the health care workers (section 4)). The agents and screening methods may vary with the different types of procedures, the cells, tissues, and organs used, and the animal source. The clinical protocol should include a summary of the relevant aspects of the health maintenance and surveillance program of the herd and the medical history of the source animal(s) (section 3).

2.5. Written Informed Consent and Recipient Education

In the process of obtaining and documenting informed consent, the investigator should comply with the applicable regulatory requirement(s) (e.g., 45 CFR part 46; 21 CFR part 50), and should adhere to good clinical practices and to the ethical principles derived from the Belmont Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The informed consent discussion, the written informed consent form, and the written information provided to subjects should address the following points relating to the risk of xenotransplantation:

2.5.1. The potential for infection from zoonotic agents known to be associated with the donor species.

2.5.2. The potential for transmission of unknown xenogeneic infectious agents to the recipient. The patient should be informed of the uncertainty regarding these risks, the possibility that infections with these agents may not be recognized for some time, and that the nature of clinical diseases that these agents may cause are unknown.

2.5.3. The potential risk for transmission of xenogeneic infectious agents to the recipient's family or close contacts, especially sexual contacts. Close contacts are defined as household members and others with whom the recipient participates in activities that could result in exchanges of body fluids. The recipient should be informed that transmission of these agents may be minimized by the use of barriers during sexual intercourse and that infants, pregnant women, elderly, and chronically ill or immunosuppressed persons may be at increased risk for infection from zoonotic or opportunistic agents (section 4.2).

2.5.4. Any need for isolation procedures during hospitalization (including the estimated duration of such confinement), and any specialized precautions (e.g., dietary, travel) following hospital discharge.

2.5.5. The need to comply with long-term or potentially life-long surveillance necessitating routine physical evaluations with archiving of tissue and/or serum specimens. The schedule for clinical and laboratory monitoring should be provided to the extent possible. The patient should be informed that any serious or unexplained illness in themselves or their contacts should be reported to their physician immediately.

2.5.6. The need for the subject to inform the investigator or his/her designee of any change in address or telephone number in order to maintain accurate data for long-term health surveillance.

2.5.7. Discussion with the patient regarding performance of a complete autopsy. Joint discussion with the recipient and his/her family concerning the need to conduct an autopsy is also encouraged in order to communicate the recipient's intent.

2.5.8. Access by the appropriate public health agencies to all medical records. To the extent permitted by applicable laws and/or regulations, the confidentiality of medical records will be maintained.

2.5.9. Consent forms should state clearly that xenograft recipients should never, subsequent to receiving the transplant, donate Whole Blood, blood components, Source Plasma, Source Leukocytes, tissues, breast milk, ova, sperm, or any other body parts for use in humans.

3. Animal Sources For Xenotransplants

Recognized zoonotic infectious agents and other organisms present in animals, such as normal flora or commensals, may cause disease in humans when introduced by transplantation of cells, tissues, or organs, especially in immunocompromised patients. The ability to screen extensively the cells, tissues, or organs intended for clinical use may be limited by the need to ensure graft viability. The risk of transmitting infectious agents can be minimized by procurement of source animals from herds or colonies that are screened and qualified as pathogen free for specific agents appropriate for the clinical application, and are maintained in an environment that minimizes exposure to vectors of infectious agents.

3.1. Animal Procurement Sources

3.1.1. Cells, tissues, and organs intended for use in xenotransplantation should be procured only from animals with documented lineages and that have been bred and reared in captivity.

3.1.2. Animals should be obtained from closed herds or colonies that are serologically well-characterized and as free as possible of infectious agents of concern for the animal species and the patient.

3.1.3. The use of animals from controlled environments such as closed corrals (captive free-ranging animals) should be used only when they are the only suitable source for a given xenotransplant procedure. Such animals require more intensive screening because of the higher likelihood that they harbor adventitious infectious agents from uncontrolled contact with arthropods and/or other animals.

3.1.4. Wild-caught animals should not be used as sources for cells, tissues, or organs intended for transplantation.

3.1.5. Imported animals or the first generation of offspring of imported animals should not be used as a source of cells, tissues, or organs unless the animals belong to a species or strain not available for use in the United States. In this case, their use should be considered only if the source characteristics for the imported animals can be documented, validated, and audited.

3.1.6. Source animals from species in which prion-mediated diseases (e.g., transmissible spongiform encephalopathies) have been reported should be obtained from closed herds with documented absence of dementing illnesses and controlled food sources (section 3.2.1.3). Bovine transplant tissue should not be obtained from countries designated by the United States Department of Agriculture (USDA) as those where bovine spongiform encephalopathy (BSE) exists (59 FR 44591, August 29, 1994, and 60 FR 44036, August 24, 1995).

3.1.7. Animals or live animal cells, tissues, or organs obtained through abattoirs should not be used as a source of xenografts. These animals are obtained from geographically divergent farms or markets and are more likely to carry infectious agents due to increased exposure to other animals, and increased activation and shedding of infectious agents during the stress of slaughter. In addition, health histories

of slaughterhouse animals are usually not available.

3.2. Biomedical Research Animal Facilities

For the purposes of xenotransplantation, animals should be housed in facilities built and operated in accordance with standards outlined in this section. As a minimum, these facilities should meet the recommendations of the Guide for the Care and Use of Laboratory Animals (the criteria for accreditation by the American Association for the Accreditation of Laboratory Animal Care (AAALAC)) and be subject to inspection by appropriate members of the transplant teams and public health agencies. Animal facilities should have a routine well-documented herd health and surveillance system. Animal facilities should have on staff veterinarians with expertise in the infectious diseases prevalent in the animal species and should maintain active collaboration with accredited microbiology laboratories.

3.2.1. The biomedical animal facility standard operating procedures should be thoroughly described regarding the following: (1) Criteria for animal admission; (2) description of the disease monitoring program; (3) criteria for the isolation or elimination of diseased animals; (4) criteria for the health screening and surveillance of humans entering the facility; (5) facility cleaning arrangements; (6) the source and delivery of feed, water, and supplies; (7) measures to exclude arthropods and other animals; (8) animal transportation; and (9) dead animal disposition. Entry and exit of animals, animal care staff, and other humans should be controlled to minimize environmental exposures/inadvertent exposure to transmissible infectious agents.

3.2.1.1. Animal movement through the secured facility should be described in the standard operating procedures of the facility. All animals introduced into the source colony other than by birth should go through a well-defined quarantine and testing period (section 3.5). With regard to the reproduction and raising of suitable animals, the use of methods such as artificial insemination (AI), embryo transfer, medical early weaning (MEW), cloning, or hysterotomy/hysterectomy and fostering may minimize further colonization with infectious agents.

3.2.1.2. During final screening and qualification of individual source animals and xenograft procurement, the potential for transmission of an infectious agent is minimized by utilizing a step-wise ''batch'' or ''all-in/all-out'' method of source animal movement through the facility rather than continuous replacement movement. With the ''all-in/all-out'' or ''batch'' method, one or more individual source animals are selected from the closed herd or colony and quarantined while undergoing final screening qualification and graft procurement. After the entire batch of source animals is removed, the quarantine and graft processing areas of the animal facility are then washed and disinfected prior to the introduction of the next batch of source animals.

3.2.1.3. The feed components, including any medicinals or other additives, should be documented for a minimum of one generation prior to the source animal. The absence of recycled or rendered animal materials in feed should be specifically documented. The absence of such materials is important for the prevention of prion-associated diseases and slow viral infections, as well as for the prevention of transmission of other infectious agents. Potentially extended periods of clinical latency, severity of consequent disease, and the difficulty in current detection methods highlight the importance of eliminating risk factors associated with prion transmission.

3.2.1.4. Facilities supplying research animals for use in xenotransplant protocols should maintain a source animal record system that documents every animal, organ, tissue, or type of cells supplied for transplantation, and the transplant centers where these were sent. Facilities should maintain records of the following: the lifelong health history of the source animals (section 3.5), the herd health surveillance (sections 3.3, 3.4), and the standard operating procedures of the animal procurement facility (section 3.2). An animal numbering or other identifier system should be employed to allow easy, accurate, and rapid linkage between the information contained in these different record systems.

3.2.1.5. In the event that the biomedical animal facility ceases to operate, all animal health records and specimens should be transferred to the respective clinical transplant centers or the centers should be notified of the new archive site.

3.3. Preclinical Screening for Known Infectious Agents

The following points discuss measures for appropriate screening of known infectious agents in the herd, individual source animal, and the xenograft (sections 3.4, 3.5, 3.6).

3.3.1. Preclinical studies should be performed in conjunction with the development of specific clinical applications for the use of xenografts. These preclinical studies should be species specific in the identification of microbial agents in xenografts. These studies should characterize the potential of identified agents for human pathogenicity. Characterization of the human pathogenicity of xenotropic endogenous retroviruses and persistent viral infections present in source animal cells, tissues, and organs is particularly important.

3.3.1.1. These preclinical studies should identify appropriate assays for the screening program to qualify xenografts for clinical use.

3.3.2. Programs for screening and detection of known infectious agents in the herd or colony, the individual source animal, and the xenograft should be tailored for the source animal species and clinical application and be updated periodically to reflect advances in the knowledge of infectious diseases. The xenotransplant team should be responsible for the adequacy of the screening program.

3.3.3. All assays used for the screening and detection of infectious agents (both commensals and pathogens) in the herd or colony, in the individual source animal, and in the final analysis of the xenograft should have well documented specificity and sensitivity as well as validity in the setting in which they are employed. Assays under development may complement the screening process.

3.3.4. Samples from xenografts should be tested preclinically with cocultivation assays that include a panel of appropriate indicator cells, including human peripheral blood mononuclear cells (PBMC), to facilitate amplification and detection of xenotropic endogenous retroviruses and other xenogeneic viruses capable of producing infection in humans. The selection of indicator cells on the cocultivation panel should be determined by the xenograft and its clinical applications. For instance, xenotransplantation involving the human central nervous system (CNS) may warrant cocultivation of samples from the xenograft with a human neuronal cell line in the attempt to detect neurotropic viruses. Serial blind passages and observation for cytopathic effect, focus formation, reverse transcriptase assay, and electron microscopy may be appropriate. When cultures suggest the presence of viral agents, immunologic or genetic techniques (enzyme immunoassays for detection of serologic cross-reactivity, immunofluorescence or other immunoassays, Southern blot analysis, polymerase chain reaction (PCR)

techniques, PCR-based reverse transcriptase assay etc.) or cross-species in vivo culturing techniques may be useful. Detection of latent viruses may be facilitated by their activation using chemical and irradiation methods. For detection of possible bacteria, universal PCR probes are available and should be considered for screening of xenografts.

3.4. Herd/Colony Health Maintenance and Surveillance

The principal elements recommended to qualify a herd or colony as a source of animals for use in xenotransplantation include: (1) Closed herd or colony, and (2) adequate surveillance programs for infectious agents. Documentation of the herd or colony health maintenance and surveillance program relevant to the specific application should be available in the standard operating procedure of the animal facility. These procedures should be available to the review committees. Permanent medical records for the herd or colony and the specific individual source animals should be maintained indefinitely at the animal facility.

3.4.1. Herd or colony health measures that constitute standard veterinary care for the species (e.g., anti-parasitic measures) should be implemented and recorded at the animal facility. For example, aseptic techniques and sterile equipment should be used in all parenteral interventions including vaccinations, phlebotomy, and biopsies. All incidents that may affect herd or colony health should be recorded (e.g., breaks in the environmental barriers of the secured facility, disease outbreaks, or sudden animal deaths). Vaccination and screening schedules should be described in detail. The use of live vaccines is discouraged but may be justified when dead or acellular vaccines are not available. Their use should be documented and taken into account in the risk assessment.

3.4.2. In addition to standard medical care, the herd/colony should be monitored for the introduction of infectious agents which may not be apparent clinically. The standard operating procedures should describe this monitoring program, including the types and the schedules of physical examinations and laboratory tests used in the detection of infectious agents.

3.4.3. Routine testing of closed herds or colonies in the United States should concentrate on zoonoses known to exist in captive animals of the relevant species in North America. Because many important pathogens are not endemic to the United States or have been found only in wild-caught animals, testing of breeding stock and maintenance of a closed herd or colony reduces the need for extensive testing of individual source animals. Herd or colony geographic locations are relevant to consideration of presence and likelihood of pathogens in a given herd or colony. Veterinarians familiar with the prevalence of different infectious agents in the geographic area of source animal origin and the location where the source animals are to be maintained should be consulted.

3.4.3.1. As part of the surveillance program, routine serum samples should be obtained from randomly selected animals representative of the herd or colony population. These samples should be tested for infectious agents relevant to the species and epidemiologic exposures. Additional directed serologic analysis or active culturing of individual animals should be performed in response to clinical indications. Infection in one animal in the herd justifies a larger clinical and epidemiologic evaluation of the rest of the herd or colony. In addition, serum samples should be stored indefinitely at the animal research facility for investigation of unexpected disease either in the herd or colony, individual source animals, or in the xenograft recipient or contacts.

3.4.3.2. Any animal deaths where the cause is unknown or ambiguous, including all fetal stillbirths or abortions, should lead to full necropsy and evaluation for infectious etiologies with documentation.

3.4.3.3. Standard operating procedures that maintain a subset of sentinel animals for the duration of their natural life are encouraged. Life-long monitoring of these animals will increase the probability of detection of subclinical, latent or late-onset diseases such as prion-mediated disease.

3.5. Individual Source Animal Screening and Qualification

The qualification of indivudal source animals should include breed and lineage, and documentation of general health, including vaccination history with attention to use of any live attenuated vaccines. The presence of pathogens resulting in acute infections should be controlled for by clinical examination and treatment of individual source animals, by use of appropriate individual quarantine periods that extend beyond the incubation period of pathogens of concern, and by herd surveillance indicating the presence or absence of infection in the herd from which the individual source animal is selected. During quarantine, individual source animals should be screened for infectious agents relevant to the particular clinical application.

3.5.1. Individual source animals should be quarantined for at least 3 weeks prior to xenograft procurement. During this time, acute illnesses due to infectious agents to which the animal may have been exposed shortly before removal from the herd or colony would be expected to become clinically apparent. It may be appropriate to modify this quarantine period depending upon the characterization and surveillance of the source animal herd or colony and the clinical urgency. When the quarantine period is shortened, justification should be documented in the protocol and the potentially increased infectious risk incurred should be addressed in the informed consent document.

3.5.1.1. During the quarantine period, candidate source animals should be screened for the presence of infectious agents (bacteria, parasites, and viruses) by appropriate serologies and cultures, complete blood count and peripheral blood smear, and fecal exam for parasites. The screening program should be guided by the surveillance and health history of the herd or colony. Evaluation for viral agents which may not be recognized zoonotic agents but which have been documented to infect either human or non-human primate cells in vivo or in vitro should be considered. Particular attention should be given to viruses with demonstrated capacity for recombination, complementation, or pseudotyping. These tests should be performed as closely as possible to the date of transplantation while ensuring availability of results prior to clinical use.

3.5.1.2. Screening of a candidate source animal should be repeated prior to xenograft procurement if a period greater than 3 months has elapsed since the initial screening and qualification was performed (e.g., if the planned xenograft was not procured or a second xenograft is obtained) or if the animal has been in contact with other nonquarantined animals between the quarantine period and the time of cells, tissue or organ procurement.

3.5.1.3. Transportation of source animals may compromise the protection ensured by the closed colony. Careful attention to conditions of transport can minimize but not eliminate disease exposures during shipping. A more extensive period of quarantine and screening comparable to that used for entry of new animals into a closed herd or colony should be instituted upon arrival. Xenografts should be procured, when feasible, at the animal facility and

transported as the cells, tissues, or organ to be transplanted.

3.5.2. All procured cells, tissues, and organs intended for clinical use should be as free of infectious agents as possible. When feasible, the use of source animals in whom infectious agents, including latent viruses, have been identified should be avoided. The presence of an agent in certain anatomic sites, for example the alimentary tract, may not preclude use of the source animal if the agent is documented to be absent in the xenograft.

3.5.3. If feasible and when it is unlikely to compromise the xenograft, a biopsy should be studied for infectious agents by appropriate screening assays (section 3.3) and appropriate histopathology prior to transplantation, and then archived (section 3.7). The results from all studies should be reviewed by the principal investigator prior to clinical use of the xenograft.

3.5.4. The sources, relevant husbandry, and health history (including use as experimental subjects) of herds and/or individual source animals should be available to the reviewing committees. All relevant health records for the life of the animal, including both the herd and the individual source animal records and a full history of vaccinations, should be available and reviewed prior to candidate animal selection and procurement of cells, tissues, and organs. These records should be maintained indefinitely for retrospective review. A copy of the individual source animal record should accompany the xenograft and be archived as part of the permanent medical record of the xenograft recipient.

3.5.5. The biomedical animal facility should notify the clinical center in the event that an infectious agent is identified in the source animal or herd subsequent to xenograft harvest (e.g., identification of delayed onset prion-mediated disease in a sentinel animal).

3.6. Procurement and Screening of Xenografts

3.6.1. Procurement and processing of cells, tissues, and organs should be performed using documented aseptic conditions designed to minimize contamination. These procedures should be conducted in designated facilities which are subject to inspection.

3.6.2. Procedures that may inactivate or remove pathogens without compromising the integrity and function of the xenograft should be employed.

3.6.3. Cells, tissues, or organs intended for transplantation that are maintained in culture prior to transplant should be periodically screened for maintenance of sterility, including screening for viruses and mycoplasma (section 3.3.4). The FDA publications entitled ''Points to Consider in Somatic Cell and Gene Therapy (1991),'' ''Points To Consider in the Characterization of Cell Lines Used to Produce Biologicals (1993),'' and ''Points to Consider in the Manufacture and Testing of Therapeutic Products for Human Use Derived from Transgenic Animals (1995)'' should be consulted for guidance.

3.6.4. To ensure reproducible quality control of the procurement and screening process, all events involved in procurement of the xenograft up to the point of transplanting the tissue into the patient should be rehearsed and documented.

3.6.5. When the animal is euthanatized during procurement of the cells, tissue, or organ, a full necropsy should be conducted including gross, histopathological, and microbiological evaluation. When xenografts are procured without euthanatizing the source animal, the animal's health should be monitored for life. When these animals die or are euthanatized, a full necropsy should follow, regardless of the time elapsed between graft procurement and death. The results of the necropsy, documented in the animal's permanent medical record, should be archived indefinitely. In the event that the necropsy findings suggest infections pertinent to the health of the xenograft recipient(s) (e.g., evidence of prion-associated disease) the finding should be communicated to all transplant centers that receive cells, tissues, or organs from this source animal (section 3.5.5.).

3.7. Archives or Source Animal Medical Records and Specimens

Systematically archived source animal biologic samples and recordkeeping that allows rapid and accurate linking of xenograft recipients to the individual source animal records and archived biologic specimens are essential for public health investigation and containment of emergent xenogeneic infections.

3.7.1. Responsibility for the care of, and access to, tissue archiving and recordkeeping should be clearly designated in the research and clinical protocol.

3.7.2. Animal source herd or colony health records, individual source animal health records, and records of the screening analysis of the xenograft should be maintained indefinitely. A summary of the individual source animal health record and a record of the xenograft screening qualification should be filed at the clinical transplant site as part of the xenotransplant recipient medical record.

3.7.3. For the purposes of retrospective public health investigations, source animal biologic specimens should be banked at the time of graft procurement and designated for public health. All specimens should remain in archival storage indefinitely to permit retrospective analysis if a public health need arises (section 4.1.1.4.). Archived source animal biologic specimens should be readily accessible and linkable to both source animal and recipient(s) health records.

3.7.4. Ideally, at least five 0.5cc aliquots of each source animal serum and plasma should be banked. At least three aliquots of viable (1×10^7) leukocytes should be cryopreserved. Optimally, DNA and RNA extracted from leukocytes should also be aliquoted and banked. Additionally, paraffin-embedded, formalin fixed, and cryopreserved tissue samples representative of major organ systems (e.g., spleen, liver, bone marrow, central nervous system) should be collected from source animals euthanatized concomitant with procurement of the xenograft.

4. Clinical Issues

4.1. Xenotransplant Recipient

4.1.1. Surveillance of the xenotransplant recipient. Post-transplantation clinical and laboratory surveillance of xenograft recipients is critical to monitor for the introduction and propagation of xenogeneic infectious agents in the general population. Performance and documentation of this surveillance should be the responsibility of the clinical center and should continue throughout the life of the recipient. Appropriate surveillance methods include the following:

4.1.1.1. Adverse clinical events potentially associated with xenogeneic infections should be evaluated during periodic clinic visits following the transplant procedure.

4.1.1.2. Biological specimens should be collected and archived to allow retrospective investigation of possible xenogeneic infections. These biological specimens should be designated for public health investigative purposes. Specimens to be collected should be appropriate to the specific transplant situation. Serum, plasma, and peripheral blood mononuclear cells (PBMC's) should be collected. Preferably, at least three to five 0.5cc aliquots of citrated or EDTA-anticoagulated plasma should be banked

at the predetermined time points outlined below. At least 2 aliquots of viable leukocytes (1×10^7) should be cryopreserved. Additionally, DNA and RNA extracted from leukocytes (1×10^7) and/or sera could be aliquoted and banked. Specimens of any xenograft that is removed (e.g., post-rejection or at time of death) should be banked.

The following schedule for archiving biological specimens is recommended: (1) Two sets of samples should be archived 1 month apart before the xenotransplant procedure. If this is not feasible then two sets should be archived as temporally separated as possible, (2) a set should be archived in the immediate posttransplant period and at approximately 1 month and 6 months post transplantation, (3) collection should then be obtained annually for the first 2 years after transplant, (4) After that, specimens should be archived every 5 years for the remainder of the recipient's life. More frequent archiving may be indicated by the specific protocol or the recipient's medical course.

4.1.1.3. In the event of death of the recipient, snap-frozen samples store at −70° C, paraffin embedded tissue, and tissue suitable for electron microscopy should be collected at autopsy from the xenograft and all major organs relevant to either the transplant or the clinical syndrome resulting in death. These specimens should be archived indefinitely for potential public health use.

4.1.1.4. The clinical center should be responsible for maintaining an ongoing and accurate archive of biologic specimens. In the absence of a central facility (section 5.2) the designated public health biologic specimens should be archived with appropriate safeguards to ensure long-term storage (e.g., a monitored storage freezer alarm system and specimen archiving in split portions in separate freezers) and an efficient system for the prompt retrieval and linkage of data to medical records of recipients and source animals.

4.1.1.5. In addition to archiving of biologic specimens, active laboratory surveillance program of the xenograft recipient should be instituted when xenogeneic agents are known or suspected to be present in the xenograft. The intent of active screening in this setting is detection of sentinel human infections prior to dissemination in the general population. Serum, PBMC's, or tissue should be assayed at periodic intervals post transplantation for xenogeneic agents known to be present in the transplanted tissue. Active surveillance should include more frequent screening in the immediate posttransplant period (e.g., at 2, 4, and 6 weeks after transplantation) with subsequently decreasing frequency in the absence of clinical indication. Assays intended for the generic detection of unknown agents may also be appropriate. Assays should be used to detect classes of viruses known to establish persistent latent infections in the absence of clinical symptoms (e.g., herpesviruses and retroviruses) (section 3.3.1.1.). When the xenogeneic viruses of concern have similar human counterparts, e.g., simian CMV, assays to distinguish between the two should be employed. Depending upon the degree of immunosuppression in the recipient, serological assays may be or may not be useful. Methods for analysis include cocultivation of cells coupled with appropriate detection assays. The sensitivity, specificity, and validity of the testing methods should be predetermined and documented under conditions simulating those employed in the xenotransplant procedure.

4.1.1.6. In response to a potential xenogeneic infection related to a clinical episode, posttransplantation testing of archived biologic specimens should be conducted in association with an epidemiologic investigation to assess potential public health significance of the infection. This investigation should proceed under the direction of appropriate health authorities following prompt notification of the State health department, CDC, and FDA.

4.2. Contacts of Recipient

The clinical protocol should outline a procedure to inform the recipient of the responsibility to educate his/her close contacts regarding the possibility of the emergence of xenogeneic infections from the source animal species and to offer the recipient assistance with this education process, if desired. Education of close contacts should address the uncertainty regarding the risks of xenogeneic infections, information about behaviors known to transmit infectious agents from human to human (i.e., unprotected sex, intravenous drug use with shared needles and other activities that involve potential exchange of blood or other body fluids) and methods to minimize the risk of transmission. Recipients should educate their close contacts about the need to inform their physician and the research coordinator at the institution where the xenotransplantation was performed of any significant unexplained illnesses in themselves or their close contacts.

4.3. Hospital Infection Control

4.3.1. Infection Control Practices

4.3.1.1. Standard precautions should be used for the care of all patients, including appropriate handwashing, use of barrier precautions, and care in the use and disposal of needles and other sharp instruments. Strict adherence to these recommended procedures will reduce the risk of transmission of xenogeneic infections and other blood-borne and nosocomial pathogens.

4.3.1.2. Additional infection control or isolation precautions (e.g., airborne, droplet, contact) should be employed as indicated in the judgment of the hospital epidemiologist and the xenotransplant team infectious disease specialist. For example, appropriate isolation precautions for each hospitalized transplant recipient will depend upon the xenotransplant, the extent of immunosuppression, and the clinical condition of the recipient. The appropriateness of infection control measures should be considered at the time of transplant and reevaluated during each readmission. Isolation precautions should be continued until a suspected xenogeneic infection has been proven and resolved or has been effectively ruled out in the recipient.

4.3.1.3. Xenotransplant teams should adhere to recommended procedures for handling and disinfection/sterilization of medical instruments and disposal of infectious waste.

4.3.2. Acute Infectious Episodes. Most acute viral infectious episodes among the general population are never etiologically identified. Xenograft recipients remain at risk for these infections and other infections common among immunosuppressed allograft recipients. When the source of a significant illness in a recipient remains unidentified despite standard diagnostic procedures, more testing of body fluid and tissue samples may be appropriate. The infectious disease specialist, in consultation with the hospital epidemiologist, the veterinarian, the clinical microbiologist and other members of the xenotransplant team should assess each clinical episode and make a considered judgment regarding the need and type of diagnostic testing and appropriate infection control precautions. Experts on infectious diseases and public health may also need to be consulted.

4.3.2.1. Immunosuppressed transplant patients may be unable to mount a sufficient immunological response for serological assays to detect infections reliably. In this setting, appropriate validated culture systems, genomic detection methodologies and other

techniques may detect diseases for which serologic testing is inadequate. Consequently, clinical centers where xenotransplantation is performed should have the capability to culture and to identify viral agents using in vitro and in vivo methodologies. Specimens should be handled to ensure their viability and to maximize the probability of isolation and identification of fastidious agents. Algorithms for evaluation of unknown xenogeneic pathogens should be developed in consultation with appropriate experts, including persons with expertise in both medical and veterinary infectious diseases, laboratory identification of unknown infectious agents and the management of biosafety issues associated with such investigations.

4.3.2.2. Archiving of acute and convalescent sera obtained in association with acute unexplained illnesses should be performed when appropriate as judged by the infectious disease physician and/or the hospital epidemiologist. This would permit retrospective study and perhaps an etiologic diagnosis of the clinical episode.

4.3.3. Health Care Workers. A comprehensive occupational health services program should be designed to educate workers regarding the risks associated with xenotransplantation and to monitor for possible infections in workers. Health care workers, including laboratory personnel, who handle the animal tissues/organs prior to transplantation will have a definable risk of infection not exceeding that of animal care, veterinary, or abattoir workers routinely exposed to the source animal species provided equivalent biosafety standards are employed. However, the risk to health care workers who provide direct/indirect post-transplantation care for xenograft recipients is undefined. Decisions regarding work restrictions or assignments for immunocompromised workers should be determined by each institution. The occupational health services program should include the following:

4.3.3.1. Education of Health Care Workers. All centers where xenotransplantation procedures are performed should develop appropriate educational materials for their staff tailored to each procedure. These materials should describe the xenotransplant procedure(s), and the known and potential risks of xenogeneic infections posed by the procedure(s). Those research or health care activities that are considered to be associated with the greatest risk of infection should be emphasized in order to minimize exposure and transmission of both zoonotic and nosocomial agents between the recipient and the health care workers. The use of Standard Precautions should be reviewed. Education programs should detail the circumstances for use of personal protective equipment (e.g., gloves, gowns, masks, etc.) and the importance of handwashing before and after all patient contacts, even if gloves are worn. The potential for transmission of these agents to the general public should be discussed.

4.3.3.2. Worker Surveillance. Protocols should be developed for the collection and archiving of baseline sera (i.e., prior to exposure to xenografts or recipients) from health care workers either on the xenotransplant team or caring for xenograft recipients and any laboratory personnel who may handle the animal cells, tissues, and organs or future biologic specimens from transplant recipients. Archived sera serve as a baseline specimen for comparing sera collected following nosocomial exposures. In addition, these protocols should describe methods of recording, storing, and retrieving information related to health care workers and specific nosocomial exposures. The activities of the Occupational Health Service should be coordinated with the Infection Control Program to ensure appropriate surveillance of infections in personnel.

4.3.3.3. Postexposure Evaluation and Management. Written protocols should be in place for the evaluation of health care workers who experience an exposure where there is a risk of transmission of an infectious agent, e.g., an accidental needlestick. Health care workers, including laboratory personnel, should be instructed to report exposures immediately to the Occupational Health Service. The postexposure protocol should describe the information to be recorded including the date and nature of exposure, the xenotransplantation procedure, recipient information, actions taken as a result of such exposures (e.g., counseling, postexposure management and followup) and the outcome of the event. This information should be archived in a Health Exposure Log (section 4.4) and maintained indefinitely at the xenotransplantation center despite any change in employment of the health care worker or discontinuation of xenotransplantation procedures at that center. Health care and laboratory workers should be counseled to report and seek medical evaluation for unexplained clinical illnesses occurring after the exposure.

4.4. Health Care Records

Each clinical xenotransplantation center should maintain indefinitely the three cross-referenced record systems: (1) An Institutional Xenotransplantation Record which documents for all xenotransplant procedures: The principal investigator, the individual source animal and its procurement facility, the date and type of procedure, the xenograft tissue recipient and a summary of the recipient's clinical course, close contacts, and the health care workers associated with each procedure; (2) a Xenotransplantation Nosocomial Health Exposure Log which documents the dates, involved persons, and nature of all nosocomial exposures which are associated with a xenotranplantation protocol and which potentially pose risk of transmission of xenogeneic infections; (3) individual xenotransplant recipient health records which document comprehensively each patient's clinical course, the results of post-transplant surveillance studies (section 4.1), and contain a summary of both the health status report and the results of the screening assays performed on source animal(s) from which the xenograft was obtained.

These records should be current and accurately cross-referenced. This systematic data maintenance will facilitate epidemiologic investigation of adverse events. In the future, these data should be linked to any national registry (section 5.1) to facilitate recognition of rates of occurrence and clustering of adverse health events, including events that may represent the outcomes of xenogeneic infections and mortality patterns, and linkage of those events to specific exposures on a national level.

5. Public Health Needs

5.1. National Registry

The public health interest would best be served by the establishment of a national registry. A national registry would enable rapid identification of epidemiologically significant common features among xenograft recipients and provide a data base for the assessment of long-term safety. Such a data base would make possible the rapid recognition of rates of occurrence and clustering of health events that may represent outcomes of xenogeneic infections; allow the accurate linkage of these events to exposures on a national level; facilitate notification of individuals and clinical centers regarding epidemiologically significant adverse events associated with

xenotransplantation; and enable biological and clinical research assessments. Information derived from the registry should be reasonably available to the public with appropriate confidentiality protection for any patient identifying information and/or proprietary information.

5.2 Serum and Tissue Archives

Samples of sera, plasma, leukocytes, and tissue of the source animal and recipient should be archived for public health investigation purposes as discussed in sections 3.7 and 4.1. Source animal and xenograft recipient specimens should be kept at individual centers under storage conditions outlined in section 4.1.1.4. Information about the location and nature of archived specimens associated with each transplant should be documented in the health care records and delineated in sections 3.7 and 4.4, and ultimately in any national registry that is established.

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The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. References 1 through 5 may also be obtained from FDA/CBER/Office of Communication, Training and Manufacturers Assistance via FAX by calling 1–800–835–4709 or via mail by calling 301–827–1800. References 21 through 24 may also be obtained from The National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, 703–487–4650.

A. Federal Laws

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4. The National Organ Transplant Act (42 U.S.C. 273 *et seq.*).
5. The Animal Welfare Act (7 U.S.C. 2132).

B. Federal Regulations

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2. Title 45 of the CFR part 46.

C. Federal Guidance

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Dated: September 13, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–24448 Filed 9–20–96; 8:45 am]

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federal register

Monday
September 23, 1996

Part VII

The President

Presidential Determination No. 96–15—Renewal of Trade Agreement With the Republic of Belarus

Presidential Determination No. 96–16—Renewal of Trade Agreement With the Republic of Kazakhstan

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Title 3—

The President

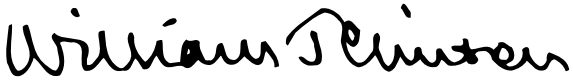
Presidential Determination No. 96–15 of March 7, 1996

Presidential Determination on Renewal of Trade Agreement With the Republic of Belarus

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1)(B) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)(B), I have determined that actual or foreseeable reductions in U.S. tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the Republic of Belarus.

You are authorized and directed to publish this determination in the Federal Register.



THE WHITE HOUSE,
Washington, March 7, 1996.

[FR Doc. 96–24552
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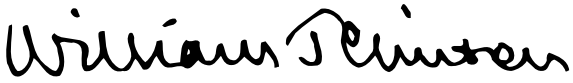
Presidential Determination No. 96–16 of March 7, 1996

Presidential Determination on Renewal of Trade Agreement With the Republic of Kazakhstan

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1)(B) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)(B)), I have determined that actual or foreseeable reductions in U.S. tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactory reciprocated by the Republic of Kazakhstan.

You are authorized and directed to publish this determination in the Federal Register.



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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.